

1 IN THE UNITED STATES DISTRICT COURT

2
3 MOHAMAD E. TAHA, (Deceased),)
4 and SANAA M. YASSIN, his wife,)
5 Plaintiffs,) Case No. 17-1174C
6 vs.)
7 UNITED STATES OF AMERICA,)
8 Defendant.)

9
10
11 Courtroom 1201
12 Timberlake Federal Annex Building
13 501 East Polk Street
14 Tampa, Florida
15 Monday, December 9, 2019
16 9:29 a.m.
17 Trial - Volume 1

18
19
20 BEFORE THE HONORABLE CHARLES F. LETTOW
21
22
23
24

25 Reported by: Lori L. Bundy, RMR, CRR, FPR

Trial

Mohamad E. Taha, et al. v. USA

12/9/2019

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1 P R O C E E D I N G S

2 - - - - -

3 (Proceedings called to order at 9:29 a.m.)

4 THE COURT: Good morning.

5 MR. TAHA: Good morning.

6 MS. KANYER: Good morning, Your Honor.

7 THE COURT: We're in an unusual setting for
8 the trial of Mohamad Taha and his wife versus United
9 States, Number 17-1174.

10 Mr. Taha, would you please announce yourself
11 for the record as the representative of the plaintiffs.

12 MR. TAHA: Yes, Your Honor. My name is
13 Ali Taha. I'm representing plaintiffs Mohamad Taha and
14 his wife, Sanaa Yassin.

15 THE COURT: Welcome.

16 MR. TAHA: Thank you.

17 THE COURT: Ms. Kanyer, will you introduce
18 yourself and your colleague, please.

19 MS. KANYER: Yes, Your Honor.
20 Elizabeth Kanyer for the United States, and with me is
21 David Pincus, also with the Department of Justice for
22 the United States.

23 THE COURT: Thank you and welcome.

24 Our court reporter today and tomorrow is
25 Lori Bundy. And if people have questions for

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1 Ms. Bundy, don't hesitate to ask them. And she will
2 help us make sure we take breaks at appropriate times
3 and otherwise address these matters in a relatively
4 quite organized fashion.

5 We have a limited mandate from the court of
6 appeals, and it's a very explicit mandate. On the
7 remand we're to decide whether the taxpayers had filed
8 an income tax refund claim, and that is so for 2003,
9 whether that claim was timely.

10 And that has to do, in part, with the
11 applicable statute of limitations, or limitations
12 period; it's not a statute of limitations, and whether
13 the claim had actually been disallowed by the Internal
14 Revenue Service. There is a possibility that we might
15 have answers to all three questions as a result of the
16 trial today and tomorrow.

17 Now, Mr. Taha, you are representing the
18 plaintiffs, neither of the plaintiffs is here, and one
19 of the plaintiffs is actually deceased. We understand
20 that you are in a position to testify as to certain
21 matters, and we'll definitely call for that. The
22 witness box is right there (indicated), and we'll ask
23 you to take the witness stand in a moment or so.

24 Where do we stand insofar as the trial
25 exhibits? Ms. Kanyer, you have provided some. Have

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1 you provided them to Mr. Taha as well?

2 MS. KANYER: Yes, Your Honor, we've provided
3 defendant's Exhibit lists. We also have sets for the
4 Court of plaintiffs exhibit lists and defendant's
5 exhibit lists.

6 THE COURT: And I understand from the
7 reporter that she has the set that is to be used by the
8 witness; is that correct?

9 MS. KANYER: The court reporter has
10 defendant's exhibit list. I wasn't sure if you wanted
11 those up at the actual witness stand.

12 THE COURT: Do you have copies for the Court
13 and the clerk?

14 MS. KANYER: We do. May I approach, Your
15 Honor?

16 THE COURT: Yes, certainly.

17 MS. KANYER: Your Honor, should we place a
18 set in the witness box?

19 THE COURT: Yes, you might as well. If we're
20 all using the same binder, then we'll be in better
21 shape. You managed to fit all these things in two
22 binders?

23 MS. KANYER: Yes. Your Honor, we also have
24 an extra set for plaintiff if plaintiff would like one.

25 THE COURT: Why don't we make sure that Mr.

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1 Taha has a set.

2 Mr. Taha, we'll give you a moment to look at
3 them to make sure you know what's there.

4 MS. KANYER: In addition, Your Honor, we also
5 have the parties' exhibit lists, as far as exhibit
6 number, witnesses and disposition as provided by the
7 Court's order.

8 THE COURT: Thank you. And if you will hand
9 those up, please, that will help us.

10 MS. KANYER: Your Honor, we also have an
11 extra set for plaintiff, if he would like one.

12 THE COURT: Yes. I hope we can take a
13 15-minute recess midmorning. I hope we can break for
14 our lunch at either 12:00 or 12:30. Do the parties
15 have a preference which one?

16 MS. KANYER: No, Your Honor.

17 THE COURT: Mr. Taha?

18 MR. TAHA: That's fine.

19 THE COURT: I'm sorry?

20 MR. TAHA: I'm in agreement.

21 THE COURT: Okay. Thank you.

22 And we had called for 15-minute opening
23 statements with a minute or so overlay. And, Mr. Taha,
24 in a moment I'm going to ask if you're ready to
25 proceed, but I'll give you a moment to make sure that

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1 you're settled in the courtroom. And you may speak
2 from that podium. You don't have to get there now, but
3 you can, if you want.

4 MR. TAHA: Your Honor, I have a couple of
5 questions.

6 THE COURT: I'm sorry. You're going to have
7 to speak up.

8 MR. TAHA: This parties' exhibit list looks
9 vague to me. I cannot recognize a single exhibit.
10 There is no title for the exhibit and the
11 identification is kind of confusing to me.

12 THE COURT: We'll find out. We'll give time
13 to make sure that everyone understands what it is.

14 MR. TAHA: Okay.

15 THE COURT: Those are just the numbers. And
16 they probably are the numbers that were assigned by
17 Ms. Kanyer; is that correct?

18 MS. KANYER: Yes, Your Honor. The way we did
19 it is, plaintiffs listed their exhibits and attached
20 their pretrial brief as A, B, and C, but within each
21 there are documents, and they didn't correspond exactly
22 page numbers. So we just assigned PDF numbers for
23 everyone's reference when referring to these for
24 efficiency purposes.

25 THE COURT: That's why the Court wanted to

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1 take a moment for Mr. Taha to take a look at the actual
2 exhibit binder, because I think you probably have them
3 identified specifically there.

4 Mr. Taha, just take a look at the binder, the
5 plaintiffs' binder, I think it's a separate binder.
6 It's the smaller volume, Mr. Taha.

7 MR. TAHA: This one here (indicated)?

8 THE COURT: I think it's the smaller volume.

9 MS. KANYER: That's correct.

10 MR. TAHA: This is my exhibit?

11 THE COURT: It should be.

12 MR. TAHA: Generally, it looks fine. And the
13 other exhibit list is -- I'm aware of because I'm the
14 one who provided all these documents.

15 THE COURT: Yes, that's fine. I wanted to
16 make sure that you knew that they were there, or if
17 they weren't, we can deal with that. But also they're
18 numbered, and so that will help you identify them as we
19 go through.

20 MR. TAHA: That's fine, Your Honor.

21 THE COURT: Lettered and numbered, I take it.

22 All right. Are there any other preliminary
23 matters we have to address before we actually begin
24 with the opening statements? Ms. Kanyer?

25 MS. KANYER: No, Your Honor.

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1 THE COURT: Mr. Taha, can you think of
2 anything we have to address?

3 MR. TAHA: Only one statement I'd like to
4 make is personal conditions of mine. I'm wearing two
5 hearing aids.

6 THE COURT: Yes.

7 MR. TAHA: So I may speak louder than
8 necessary or I may not be able to hear the question or
9 anybody's statement, therefore, I may request a repeat.

10 THE COURT: Yes. And, in fact, I'm used to
11 the witness actually being on the left side and I might
12 have trouble hearing on my right side.

13 Stephanie, do you want to switch sides?

14 CLERK: I don't mind.

15 THE COURT: And then we'll use the left
16 side -- my left, your right -- as the witness stand.
17 And we'll probably have an easier time all the way
18 around hearing.

19 MS. KANYER: Your Honor, may I switch the
20 exhibits?

21 CLERK: Do you want me to leave them?

22 MS. KANYER: Yes.

23 CLERK: Then they're over there.

24 THE COURT: Now, if the reporter has any
25 difficulty hearing, all she has to do is signal to us

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1 and we can address it.

2 COURT REPORTER: Yes, Your Honor. Thank you.

3 THE COURT: Are we ready then to begin?

4 Mr. Taha?

5 MR. TAHA: Your Honor, may I make a
6 statement, another statement, in regards to the timing
7 of presenting the opening statement?

8 THE COURT: Yes. Why don't you take the
9 podium. There is a microphone at the podium, and it
10 will help.

11 MR. TAHA: I'm representing plaintiffs here
12 for the facts that, number one, we are facing the IRS,
13 the Government, two sectors, and three courts that what
14 we have experienced so far.

15 And, therefore, my opening statement may take
16 longer than 15 minutes. I indicated this to you, Your
17 Honor, on December 2nd. And my understanding, that it
18 shouldn't be a problem if I go 20 minutes.

19 THE COURT: Several minutes. We just try to
20 be very precise and organized, Mr. Taha. But I do
21 understand.

22 Let me ask an initial question. I take it
23 that Mr. Mohamad Taha is a brother of yours; is that
24 correct?

25 MR. TAHA: He is my brother, Your Honor.

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1 THE COURT: Yes. He is your what?

2 MR. TAHA: My brother.

3 THE COURT: Yes. So you're a family member
4 of the plaintiffs, which is an appropriate -- and
5 you're, thus, under the Court's rules, an appropriate
6 representative.

7 MR. TAHA: That's correct, Your Honor.

8 THE COURT: Yes. You may proceed.

9 MR. TAHA: Good morning, Your Honor, and good
10 morning, Counsel. My name is Ali Taha. I'm 79 years
11 old. I'm representing plaintiffs Mohamad E. Taha,
12 deceased, and Sanaa Yassin, his wife, as pro se
13 plaintiffs versus United States as defendant, Case
14 Number 17-1174C. Unfortunately neither plaintiff can
15 be present.

16 Before I start I would like to make a
17 personal note. English is my second language with
18 possible occurrence of unintended or inadvertent
19 grammatical experiences or pronunciations.

20 THE COURT: Mr. Taha, may I just note that
21 your locution and your use of the English language is
22 very adept. It's very satisfactory.

23 MR. TAHA: Thank you, Your Honor.

24 I apologize if that occurs.

25 Moreover, it has been everything wrecking for

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1 this action in facing the IRS, two government sectors,
2 and three courts in order to achieve plaintiffs' rights
3 that have been denied for 12 years. The legal entities
4 are facing only one, that is plaintiff.

5 This action is the subject of recovering
6 plaintiffs' claim for tax refund in the amount of
7 \$14,177 paid for years 2002 and 2003.

8 As owner and chairholder of a private
9 family-owned company by the name of Atek Construction,
10 Inc., S Corporation in California, I contributed
11 10 percent of my own shares to brother, Mohamad Taha,
12 in year 2002.

13 This contribution was to help him and his
14 family of five to have a starting opportunity to earn
15 money to live on while they became residents of the
16 United States. Financially, they were my
17 responsibility such that they would not become a
18 financial burden on the United States Government.

19 THE COURT: Mr. Taha, just a moment.

20 Ms. Kanyer, somewhat unusually, I think
21 Mr. Taha is testifying as to facts. I would actually
22 like to swear Mr. Taha as a witness as he's giving his
23 opening statement. May I do that?

24 MS. KANYER: No objection, Your Honor.

25 THE COURT: No objection.

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1 Mr. Taha, may I swear you as a witness? Just
2 because some of the recitations you're making are
3 factual ones, and they're not necessarily in the
4 record, and I'd like them to be in the record as
5 evidence. Do you mind?

6 MR. TAHA: I do not mind.

7 THE COURT: Just raise your right hand to be
8 sworn then.

9 Mr. Taha, do you swear or affirm that the
10 testimony you're about to give in this case shall be
11 the truth, the whole truth, and nothing but the truth
12 so help you God?

13 MR. TAHA: I do.

14 THE COURT: Thank you. You may proceed.

15 THEREUPON,

16 ALI TAHA,
17 a witness, having been first duly sworn, upon his oath,
18 testified as follows:

19 MR. TAHA: I'll go back to my statement that
20 I could not finish.

21 Financially, they were my responsibility such
22 that they would not become a financial burden on the
23 United States Government as mandated in my sponsorship
24 to their immigration.

25 Neither Mohamad or his wife were proficient

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1 in communication. They only had minimal education.
2 Mohamad Taha, as a shareholder of Atek, earned ordinary
3 income in the amounts of \$85,010 for year 2002, and
4 \$77,813 for year 2003 at a total of \$162,823. He was
5 paid \$20,000 by Atek to pay their taxes for both years,
6 leaving a balance of \$142,823 owed by Atek.

7 Atek executed two promissory notes to its
8 shareholders for both years, as procedurally adopted
9 since Atek's inception in 1996.

10 Taxpayers Mohamad Taha and his wife,
11 Sanaa Yassin, filed jointly their income tax returns
12 and paid income taxes of \$8,573 for 2002 and \$5,604 for
13 2003 for a total of \$14,177.

14 They also paid state taxes to the California
15 Franchise Tax Board in the amount of \$4,626 for both
16 years.

17 In year 2004, Atek experienced financial
18 difficulties because of delays of project owners in
19 paying its receivables. Atek's creditors and other
20 complained and requested the bonding companies who
21 bonded Atek's projects to be paid.

22 The bonding companies immediately took over
23 Atek's operation, ordered project owners to withhold
24 receivable payments due to Atek, filed suits against
25 Atek and its primary shareholders, and hired other

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1 contractors to finish the projects.

2 That put Atek out of business, and,
3 therefore, forced it into dissolution. The bonding
4 companies essentially forced Atek -- repeat, the
5 bonding companies essentially froze Atek's multimillion
6 dollars in receivables and other assets and possessed
7 all shareholders' monies of \$1,871,000 owed by Atek.

8 As such, all shareholders of Atek lost their
9 distributed income, including taxpayers' earned income
10 of \$142,823 that was lost and became business bad debt.
11 That is worthless.

12 Taxpayers filed simultaneously their amended
13 income tax returns, Forms 1040-X with the IRS in
14 Fresno, California, for both years, 2002 and 2003.
15 Their claim was filed within the IRS seven-year statute
16 on the basis of the loss of their income as business
17 bad debt.

18 THE COURT: If that claim was actually filed,
19 Mr. Taha, in 2009, if the Court recalls correctly, when
20 in 2009?

21 MR. TAHA: They were filed in 2007,
22 Your Honor.

23 THE COURT: '7. Thank you for clarifying.

24 MR. TAHA: Their claim was filed within the
25 IRS seven-year statute on the basis of the loss of

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1 their income as business bad debt supported with
2 documented evidence. The IRS center in California,
3 this allowed the taxpayers' claim for 2002 on
4 December 20, 2007. That answers your question,
5 Your Honor.

6 THE COURT: Yes, thank you.

7 MR. TAHA: The IRS alleged that it received
8 the claim late; that is, three years from the return
9 due date, which was not applicable to the claim for bad
10 debt.

11 Taxpayers notified the IRS of the 2003 claim
12 in multiple letters to no avail. They were ignored;
13 that is, plaintiff or taxpayers. Although the 2002 and
14 2003 claim were filed correctly, taxpayers reconsidered
15 and re-amended their tax refund claim under year 2004
16 on November 1, 2009, as legally advised.

17 Year 2004 was considered to be fixed and
18 determinable within which the income was lost and
19 became bad debt due to Atek's dissolution. That also
20 qualified the claim for tax refund under the IRS
21 seven-year statute for business bad debt,
22 Code 6511(d)-1.

23 The claim was supported with preponderance of
24 evidence for the bad debt. Five years -- sorry. Five
25 other IRS centers in Pennsylvania, Tennessee,

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1 Pennsylvania again, Florida, and Texas shuffled
2 taxpayers' claim from one state to another for ten
3 years. They disallowed the claim.

4 Before and after taxpayers' several appeals,
5 these centered alleged that they received the claim
6 late; that is, three years from the return due date or
7 other meritless reasons, which was not true or
8 applicable for the business bad debt.

9 After 3,575 days of messy and disoriented
10 standard written disallowances and meaningless letters
11 by six IRS centers in six states, 33 agents,
12 12 departments, and 33 letters that were responded with
13 30 letters of appeals by taxpayers, the IRS finally
14 recognized and determined on March 22, 2016, that,
15 quote, dot, dot, dot, which is a continuation sentence,
16 "The bad debt statute of seven years is correct and the
17 claim would be worthy of reconsideration if there had
18 been actual bad debt," closed quote.

19 It became obvious that the IRS intentionally
20 ignored the preponderance of evidence for the bad debt
21 that was previously provided on January 21, 2008, and
22 provided again on February 24, 2015, at the request of
23 the IRS.

24 Taxpayers exhausted every administrative
25 remedy available and demonstrated a good faith effort

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1 to resolve all issues with the IRS before filing this
2 action. They were left with no further options but to
3 file suit.

4 They filed their complaint for tax refund in
5 this action on May 10, 2017, with the District Court of
6 Florida. Plaintiffs could not afford an attorney.
7 They filed their complaint as pro se with my
8 representation.

9 Plaintiffs' complaint complied with
10 Rules 7422, 3402, 6532, and 6511. The district court
11 ordered the transfer of the complaint to court of
12 federal claims due to plaintiffs' residency issues with
13 emphasis of concurrent jurisdiction with this Court.

14 Plaintiffs transferred their complaint to the
15 district court -- sorry. Plaintiffs transferred their
16 complaint to the court of federal claims on
17 September 15, 2017. In response to plaintiffs'
18 complaint, defendant filed its motion to dismiss
19 plaintiffs complaint on January 30, 2018.

20 Defendant followed with a motion for
21 clarification after their motion to dismiss was
22 granted. Defendant alleged that the Court has no
23 subject matter jurisdiction.

24 No fact or proof or substance were presented
25 by defendant for its allegations. Due to the absence

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1 of tangible facts, defendant only resorted to cite
2 hundreds of referenced cases that were presumably
3 inapplicable, some of which were proven as such.

4 I prove some of those cases, or those cases
5 on Your Honor that they were not applicable, and we can
6 talk about them a little later after this.

7 Respectfully, defendant ignored and/or failed
8 to acknowledge the preponderance of evidence that
9 plaintiffs presented for the business bad debt.

10 Following defendant's motion to dismiss, the
11 Court issued its opinion and order on April 10, 2018,
12 regard granting defendant's motion to dismiss followed
13 by its order granting the defendant's motion for
14 clarification. The Court also alleged that it lacked
15 subject matter jurisdiction.

16 It is presumed that the Court relied heavily
17 on defendant's allegations and reference to case laws.
18 The Court also relied on referencing its allegations to
19 several cases that were presumably inapplicable.

20 In fact, some of these cases were proven
21 inapplicable. Respectfully, the Court also ignored
22 acknowledging plaintiffs preponderance of evidence for
23 its jurisdiction.

24 Plaintiffs requested the Court to reconsider
25 its ruling by filing their objection to Court's orders

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1 to dismiss on January 8, 2018, that included the
2 preponderance of evidence for the bad debt.

3 Plaintiff respectfully alleged that the
4 Court's factual findings were clearly erroneous. The
5 Court's selection of law and its application of law to
6 such findings regarding plaintiffs' claim for tax
7 refund was contrary to law.

8 In response to plaintiffs' objection to the
9 Court's order granting defendant's motion to dismiss,
10 the Court issued its order on May 1, 2018, by stating,
11 quote, the clerk is directed to file the submission.
12 That is my -- that is my objection.

13 But the Court has no power to consider it.
14 Jurisdiction has passed to the court of appeals for the
15 federal circuit now that plaintiff has taken an appeal.

16 Plaintiff has taken appeal reluctantly,
17 reluctantly as the only option to pursue their claim as
18 directed by the Court's front office because the
19 Court's order was asserted as final and not subject to
20 objection.

21 In response to plaintiffs' appeal in the
22 federal circuit, the federal circuit issued its opinion
23 and order on December 14, 2018, affirming in part,
24 vacating in part, and remanding plaintiffs' claim for
25 tax refund for this Court to resolve.

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1 Plaintiffs' impetus (phonetically) filed
2 their petition for rehearing on January 3, 2019, for
3 the federal circuit to reconsider its omission of their
4 issues of facts, but denied with no reason.

5 As of today, 923 days were consumed in
6 courts, compounded by heavy volumes of motions and more
7 motions by defendant on orders and more orders by the
8 Courts. They were responded with heavier volumes, with
9 counter motions and objections to no avail.

10 It became clear that the business bad debt
11 became the major issue of this action, plus other
12 issues alleged by defendant and the Courts. As the
13 honorable judge affirmed during the telephonic
14 conference on April 5, 2019, this action is now a de
15 novo in this trial. He affirmed the same again in
16 subsequent telephonic conferences.

17 I intend to dispute defendant's allegations
18 and requesting the Court to dismiss plaintiffs' claim
19 for tax refund on the alleged grounds that the Court
20 has no jurisdiction. I will dispute that. Defendant
21 provided no proof for its allegations, and, therefore,
22 were of no merit.

23 I will dispute the Court's order granting
24 defendant's motion to dismiss on the alleged grounds
25 that it has no jurisdiction. The Court did have

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1 jurisdiction based on all the evidence that plaintiffs
2 provided in regards to their compliance with the rules.
3 The district court affirmed its concurrent jurisdiction
4 with this Court as well.

5 I will present the evidence to prove that
6 plaintiffs' claim for tax refund was justified as
7 claimed within the seven-year statute for business bad
8 debt and compliance with the rules. I will provide
9 hard evidence to that effect, including the IRS
10 admission of the seven-year statute as correct.

11 I will rebut defendant and/or the Court's
12 allegations that were presented without proof. I will
13 rebut some of the hundreds of cited cases as
14 inapplicable to plaintiffs' case. My search of
15 comparable cases did not produce any in existence.

16 Lastly, plaintiffs emphasize that their claim
17 for tax refund is sound and clear. They were refunded
18 their California state taxes in the amount of \$8,364.86
19 for 2002 and 2003 on the basis of bad debt.

20 THE COURT: When did that occur, Mr. Taha?

21 MR. TAHA: A few years ago.

22 THE COURT: Two years ago?

23 MR. TAHA: Few. A few years ago.

24 THE COURT: All right. Thank you.

25 MR. TAHA: And I may have evidence of the

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1 refund in checks that I can present.

2 THE COURT: Well, if you recall, if you know
3 personally, then you can testify to that effect.

4 MR. TAHA: Yes, Your Honor.

5 Mr. Eyad Khalil has filed and was refunded
6 his taxes of refund 2,200 -- let me repeat again.

7 Mr. Eyad Khalil, who was another major
8 shareholder of Atek, has filed and was refunded his
9 taxes of around \$200,000 for 2002 and 2003 on the basis
10 of bad debt as he declared in his subpoena to produce
11 documents in this action. His declaration is
12 considered authentic. He confirmed the same to
13 Ali Taha by e-mail; that's me.

14 Plaintiffs' refund claim of \$14,177 for 2002
15 and 2003 on the basis of bad debt was respectfully
16 disallowed unjustly by the IRS, the Government, and the
17 Courts.

18 This Honorable Court should not allow the
19 double standards adopted by the IRS in refunding one
20 taxpayer, Mr. Kahlil, and didn't allow another, that's
21 plaintiffs, on the same basis of the business bad debt
22 for the same years from the same debtor; that's Atek.

23 In conclusion, plaintiffs are represented
24 here in this court in front of the honorable judge and
25 defendant's counsel to fight for their rights in

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1 claiming their tax refund.

2 They pray for a fair, just, and
3 jurisdictional ruling in their favor. They pray not to
4 be defeated based on obtuse technicality or mere
5 allegations without facts or evidence. They pray for a
6 non-bias conclusion by the Honorable Court as a
7 government entity.

8 Plaintiffs' claim for tax refund filed within
9 the seven-year statute for business bad debt was
10 supported with evidence. In fact, the IRS concurred
11 and determined that plaintiffs' claim filed within the
12 seven-year statute was correct.

13 That also affirmed that plaintiffs' claim was
14 filed for 2002 and 2003 individually, or 2004 inclusive
15 of 2002 and 2003 was correct. Plaintiffs complied with
16 the rules and bore the burden of proof for
17 jurisdiction. Thank you.

18 THE COURT: Thank you, Mr. Taha.

19 Ms. Kanyer?

20 MS. KANYER: May it please the Court, Your
21 Honor, Elizabeth Kanyer for the United States.

22 This case is about two things, whether a
23 claim for refund was filed for tax year 2003, and if
24 that claim for refund was filed, whether it was timely
25 in taking into account bad debt; that is, business bad

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1 debt.

2 THE COURT: Well, the question is in
3 addition, whether it was ever disallowed by the IRS, if
4 it was filed?

5 MS. KANYER: That is correct, Your Honor.
6 That was one of the issues that the federal circuit
7 asked us to address. The Government isn't contending
8 that there's any disallowances that we can point to.

9 So related to the first issue, the filing,
10 the evidence will show that the Internal Revenue
11 Service did not receive a claim for refund for tax year
12 2003; that is, a Form 1040-X Amended U.S. Individual
13 Tax Return for 2003.

14 The United States will present evidence of a
15 Form 4340, a Certificate of Assessment, Payment, and
16 Other Specified Matters, which do not list any refund
17 for tax year 2003. These Forms 4340s are presumed
18 true, accurate, and correct.

19 In addition, we will also be calling a
20 witness, an IRS revenue agent, Mr. Wolff, who has over
21 25 years of experience with the IRS. He will be
22 authenticating the IRS documents and explaining how
23 Forms 1040-X are received and accounted for by the IRS.

24 In previewing plaintiffs' case, plaintiffs'
25 representative indicated that he will be presenting

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1 evidence of mailing through the Form 1040-X for 2003,
2 along with evidence of mailing of Form 1040-X for
3 2002 and various --

4 THE COURT: It appears that they were both
5 filed in November of 2007, now that we have that
6 particular answer, and they appear to have been filed
7 at the same time.

8 MS. KANYER: That is plaintiffs' testimony,
9 Your Honor, but the evidence will show that plaintiff
10 does not -- or excuse me, plaintiffs' representative
11 does not specifically recall how it was mailed or who
12 it was mailed or show any evidence of certified mailing
13 or registered receipt.

14 In addition, relating to the second issue,
15 Your Honor, the timeliness or the bad debt; that is,
16 business bad debt, the evidence will show that
17 plaintiff Taha worked his entire career in the United
18 Arab Emirates. In 2002, Ali Taha gave his brother
19 10 percent of the shares in exchange for nothing. He
20 did not pay any money in exchange for the shares of
21 Atek Construction.

22 Atek Construction was a construction
23 business. It would bid on projects, it would obtain
24 bonding, hire employees, hire subcontractors, purchase
25 material and supplies, and actually construct

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1 businesses -- or construct projects, excuse me.

2 But the evidence will show that plaintiff
3 Taha did not have any role in Atek, he had no titles
4 with Atek, he was not responsible for any of those
5 activities, so he wasn't responsible for the bidding or
6 obtaining bonding or hiring or purchasing materials or
7 constructing any of the materials -- constructing any
8 of the projects.

9 He also didn't review any financial
10 statements or any return filing. Quite simply, he was
11 merely a shareholder.

12 Through Atek's activities, though, it did
13 receive income in 2003. Plaintiff Taha, as a
14 shareholder, paid tax on that pro rata share of Atek's
15 income. And Atek, instead of distributing those
16 proceeds to plaintiff Taha, reinvested those proceeds
17 in the company to keep it operational.

18 This is because Atek always paid its
19 creditors before making any distributions to its
20 shareholders. This meant that Atek would pay its
21 employees, its subcontractors, its material and
22 suppliers before making any distributions to the
23 shareholders.

24 Now, at some point in 2004, plaintiffs'
25 representative has presented testimony, and will likely

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1 present more testimony, that Atek stopped making
2 payments to some of its creditors and eventually those
3 creditors sought payments from the bonding companies.

4 Plaintiffs are seeking to present evidence of
5 a bonding takeover that prevented Atek from being able
6 to pay its creditors. But the evidence will show,
7 Your Honor, that the plaintiffs in this case had no
8 knowledge of any of the bonding company's letters,
9 demand letters, or complaints, or any of the final
10 actions that occurred with respect to the bonding
11 companies.

12 Now, plaintiffs in this case are seeking to
13 convert what was undistributed shareholder income into
14 debt. And to do so, they are presenting evidence of a
15 promissory note. This promissory note was generated by
16 Ali Taha. It was the -- the purported debt is that
17 undistributed shareholder income.

18 And the evidence will show that plaintiff did
19 not -- plaintiff Mohamad Taha did not provide any money
20 in exchange for this promissory note. He also was not
21 involved in negotiating any of the terms of the
22 promissory note, meaning, you will see, a provision for
23 interest, he did not negotiate any of the provisions
24 for interest, he did not negotiate any of the payment
25 terms.

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1 In addition, there will also be evidence that
2 plaintiff Taha did not demand or even calculate any
3 interest on this note. It did not demand any security
4 in exchange for this loan, and it did not actually
5 require any fixed payments or a maturity date for this
6 note. And the evidence --

7 THE COURT: Will the promissory notes be put
8 into evidence?

9 MS. KANYER: Your Honor, we have some issues
10 with the timing of this document, and so we're
11 objecting on those grounds. We think that we can -- I
12 think I can deal with that during the cross.

13 THE COURT: Would you, please.

14 MS. KANYER: In addition, Your Honor, Atek,
15 as the corporation, did not treat this as a loan. It
16 reported to the IRS that it did not have any loans
17 outstanding, any loans from shareholders by the end of
18 tax year 2003. And also, its financial statements do
19 not report any outstanding loans.

20 Now, plaintiffs, after not having received
21 any payments, they did not actually seek any legal
22 proceedings or anything to collect this purported debt.
23 Instead, they held off at the request of their brother,
24 Ali Taha.

25 And in 2006, they filed a proof of claim in

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1 another shareholders' bankruptcy proceeding hoping to
2 get paid. And it wasn't until after that bankruptcy
3 proceeding in 2007 that plaintiffs are even purporting
4 that they filed a refund claim.

5 So, Your Honor, at the end of this trial --

6 THE COURT: The bankruptcy involved which
7 entities?

8 MS. KANYER: It involved Eyad Khalil, one of
9 the shareholders.

10 THE COURT: But not Atek itself?

11 MS. KANYER: Correct.

12 THE COURT: That was the Court's
13 understanding.

14 MS. KANYER: That is our understanding as
15 well, Your Honor.

16 So, Your Honor, at the end of this trial,
17 we'll be asking you to find that the Court lacks
18 jurisdiction over this complaint as to 2003 because the
19 evidence will show that plaintiffs did not file a
20 refund claim, and because plaintiffs did not incur a
21 bad debt, that is business debt.

22 THE COURT: Let me ask a question. Mr. Taha
23 has indicated that the State of California provided a
24 tax refund to the plaintiff Tahas. Is that correct?

25 MS. KANYER: That is his testimony. We

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1 haven't received any documents. He hasn't produced any
2 of those documents during discovery. We haven't seen
3 the claim for refund, we haven't seen a check actually
4 providing the refund. So our understanding is, that's
5 his testimony.

6 THE COURT: All right. That will be a
7 subject of Mr. Taha's testimony and your
8 cross-examination, one would assume?

9 MS. KANYER: That is correct.

10 Your Honor, we also wanted to address briefly
11 the issue of the proper party. We'll address it during
12 the opening.

13 So, Your Honor, the issue of whether
14 Mohamad Taha should be dismissed because he is
15 deceased, plaintiff Taha passed away before this suit
16 was initiated, and it is well established that the
17 answer to the question of whether an action can be
18 initiated in the name of a deceased person is, in a
19 quote, plainly no.

20 A deceased person does not have legal
21 existence, which is a prerequisite to have the capacity
22 to sue or be sued. A person who dies before filing
23 suit does not -- is not a legal entity, which renders
24 the suit a nullity or otherwise extinguishes the claim
25 unless it's inherited by some other party.

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1 Case law's also clear that you can't
2 substitute a party because Rule 25 contemplates that a
3 person actually had a legal existence at the beginning
4 of an action. Courts have indicated that you could
5 amend a complaint in order to add the proper party, but
6 then as we were -- as it was discussed earlier today,
7 it becomes whether or not the representation of pro se
8 person is proper.

9 Because at this point, Mohamad Taha would be
10 proceeding as his estate and case law is clear that an
11 estate like a corporation needs to have an actual
12 lawyer represent the party. And so that would be an
13 independent reason why this case --

14 THE COURT: Well, it depends. If there's an
15 executor of the estate and the executor of the estate
16 is a family member, that is a possible route for
17 representation.

18 MS. KANYER: Correct, but in -- in those
19 cases, that was the only beneficiary, was the personal
20 representative. In this case we have evidence that
21 there is also Ms. Yassin and her children that might
22 have an interest in this claim, and in those cases
23 Courts analogize them.

24 THE COURT: Well, the Court doesn't know
25 that. We'll have to establish that as a factual matter

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1 during the trial.

2 MS. KANYER: Understood. And the other issue
3 that we also raised in the pretrial hearing was the
4 issue of Ms. Yassin's interest in the overpayment.

5 Ms. Yassin was a homemaker, she did not earn
6 any income during the years at issue, and so she did
7 not herself contribute to the overpayment.

8 THE COURT: Why would that make a difference?

9 MS. KANYER: So in order to be entitled to
10 the refund, you have to actually be the one who makes
11 the overpayment.

12 THE COURT: But if the man and wife filed a
13 joint return and held the asset jointly, why would not
14 that suffice for the purpose?

15 MS. KANYER: So that is a matter of state
16 law. The case law is pretty clear that the issue of
17 who is entitled to the overpayment looks at the person
18 who contributes it.

19 THE COURT: Well, we'll find out. It's not
20 readily apparent at that point -- well, the point being
21 when they were shareholders, where they resided. And
22 Mr. Taha can apparently testify to that effect. If it
23 was California, that's one thing.

24 MS. KANYER: Right. And so --

25 THE COURT: California is a community

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1 property state.

2 MS. KANYER: And our understanding of the
3 case law is that even in community property states,
4 that would be an issue that would occur after the
5 refund would actually be -- if there was an entitlement
6 to a refund, those actions would take place after the
7 refund was provided.

8 THE COURT: This is just such a fascinating
9 case. I've never seen a case like this that is so
10 complicated in all its legal aspects that is yet
11 something that should be quite simple.

12 You have to know a lot about Subchapter S,
13 you have to know a lot about equity, and contributions
14 to capital, you have to know a lot about survivorship
15 or not, you have to know a little about community
16 property. It's just fascinating. It's like a puzzle.

17 MS. KANYER: I agree, Your Honor.

18 THE COURT: You're so lucky.

19 MS. KANYER: Your Honor, we would propose
20 that this would be something that we would be able to
21 address on any post trial briefing and proceed forward
22 with today.

23 THE COURT: All right.

24 MS. KANYER: Thank you, Your Honor.

25 THE COURT: Thank you. Would you like to

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1 take a recess at this point for about five or
2 ten minutes?

3 MS. KANYER: Yes, Your Honor.

4 MR. TAHA: As you wish, Your Honor.

5 THE COURT: What?

6 MR. TAHA: As you wish.

7 THE COURT: Well, we shall. We'll take a
8 recess for ten minutes.

9 (A break was taken.)

10 THE COURT: Mr. Taha, why don't you take the
11 witness stand. And you're already sworn as a witness,
12 so why don't you just sit right over there and the
13 reporter and I will -- and take your exhibit binder
14 with you, please, and your notes. You can leave -- the
15 witness binders, Mr. Taha, are already in place. You
16 can just go ahead and take your notes and sit.

17 Mr. Taha, before you begin, where do you
18 actually reside at this point?

19 MR. TAHA: I reside in Bradenton, Manatee
20 County, in Florida, of course.

21 THE COURT: Thank you. And, Mr. Taha, you
22 may go ahead and testify from the documents and cover
23 each of the documents in your plaintiffs' binder, if
24 you could, please.

25 And, Ms. Kanyer, if you would, at any given

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1 point, help us out, that would be appreciated.

2 MR. TAHA: May I ask for some clarification
3 of how to start? Do I understand that -- start with
4 presenting all the documents as evidence?

5 THE COURT: Yes, you are.

6 MR. TAHA: Yes.

7 THE COURT: You might start -- just look
8 through the plaintiffs' exhibit list. Ms. Kanyer was
9 kindly disposed and hopefully put all these in the same
10 order that you had presented them, so they ought to be
11 familiar to you.

12 MR. TAHA: First, I would like to talk about
13 taxpayer Mohamad Taha's earned income as ordinary
14 income from Atek Construction.

15 THE COURT: Could you cover one thing before
16 you begin, what was your role in the Atek corporation?

17 MR. TAHA: I was part owner at 50 percent
18 shareholding. My title was president and secretary.
19 I basically was a cofounder of Atek Construction with
20 my nephew who was spelled out in this action. His name
21 is Eyad Khalil.

22 THE COURT: What was your management role at
23 Atek corporation?

24 MR. TAHA: It's essentially an administrative
25 role; that is, helping in negotiating contracts to do

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1 the work on behalf of Atek, Atek's accounting system,
2 comprehensively.

3 Essentially, the other thing I would like to
4 say, I do have an accounting degree. And as counsel
5 mentioned at one time or another, that I never
6 practiced accounting. But I did practice accounting
7 with Atek. I prepared my own income tax returns since
8 1973. I did that myself. I never been audited. For
9 over 50 years, never been audited.

10 Atek was audited. And with my role in Atek,
11 I was ready to prepare all the documentations for the
12 federal government that was represented by an auditor
13 to audit Atek for two years consecutively, two years.
14 I had boxes prepared with all the evidence that I was
15 expecting to be questioned about.

16 Atek was granted relief. There was nothing
17 to find, there was nothing against the law that was
18 documented; nothing.

19 THE COURT: Did you have a role, for example,
20 in preparing the returns that are listed as Exhibit A
21 in your binder?

22 MR. TAHA: I prepared the necessary
23 documentation for the CPA to prepare this documentation
24 in Exhibit A.

25 And what I prepared, based on a list that the

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1 CPA asked you for -- or asked me for, for example,
2 balance sheet, profit and loss, expense accounts,
3 receivables. Whatever is in the accounting system that
4 came out of this Exhibit A, I have to prepare that to
5 the CPA for him to prepare it.

6 THE COURT: In the first page of the actual
7 return, 1120-S for 2002, there's a signature. Whose
8 signature is that?

9 THE WITNESS: There are two signatures,
10 Your Honor.

11 THE COURT: Yes.

12 THE WITNESS: The bottom signature is the
13 CPA's signature, and the top signature is mine.

14 THE COURT: And it shows -- lists the date of
15 March 15, 2003, and you as president. Was that your
16 status at that time?

17 THE WITNESS: That's correct.

18 THE COURT: All right. I'm going to try to
19 stop asking questions. What I'm trying to do is get
20 you to introduce these subjects, and you can walk or
21 weigh through them, if you would, please.

22 THE WITNESS: I'm sorry, Your Honor.

23 THE COURT: All right. No, go ahead. Walk
24 us through these.

25 THE WITNESS: This income tax return, 1120-S,

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1 is entitled "United States Income Tax Return for an
2 S Corporation." This form shows as a caution under
3 Item Number G, if you look at where G is, there is a
4 caution. It says, "Include only trade or business
5 income and expenses on lines A-1 through -21."

6 What this means, if you look at line 1-A is
7 the gross receipts from the contracts that Atek
8 received.

9 Do I need to say the number, Your Honor?

10 THE COURT: No.

11 MR. TAHA: Okay. And then line 2, it shows
12 the gross cost of goods.

13 THE COURT: I don't think you need to cover
14 what's actually on the form; just the fact that you
15 probably apparently signed this at the stated date,
16 as -- in your role as president of Atek; is that
17 correct?

18 MR. TAHA: That's correct.

19 THE COURT: All right.

20 MR. TAHA: So, however, I would like to refer
21 you very important points that were either ignored or
22 denied by defendant.

23 If you look at Schedule K on the second page,
24 in regards to shareholders' share of income for these
25 deductions, et cetera, prorated share of items,

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1 initially, I believe, I recall it was denied as the
2 income was pro rata share.

3 So I want to clarify this and emphasize it,
4 that the income was pro rata share based on every
5 shareholders' percentage of share. That schedule, what
6 is called Schedule K, is a comprehensive schedule for
7 all shareholders' income.

8 Now, on the other following pages that I will
9 show -- I will show you, that Schedule K is divided
10 into Schedule K-1 for all the shareholders. Each
11 shareholder would receive Schedule K-1 showing their
12 pro rata share of income as ordinary income, probably
13 four or five pages after.

14 After Schedule K, Your Honor --

15 THE COURT: Mr. Mohamad Taha is
16 Shareholder 4; is that correct?

17 MR. TAHA: Mohamad Taha is what?

18 THE COURT: I'm sorry?

19 MR. TAHA: I'm sorry, I didn't get your
20 answer.

21 THE COURT: Mr. Mohamad Taha is Shareholder
22 4; is that correct?

23 MR. TAHA: Yes, Mohamad Taha is a share --
24 shareholder of Atek at 10 percent, as I emphasized
25 earlier.

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1 And you can see, Your Honor, his ordinary
2 income of 83,168, and there's interest that Atek made,
3 those two numbers added up to 85,000, I believe, and 10
4 dollars. That was for year 2002 that showed on
5 Mohamad's income tax return 1040. And I will come to
6 that.

7 Another thing I would like to point on this
8 form, Your Honor, on this exhibit, if you look at
9 Schedule M, that's page 4, page 4 of Form 1120-S,
10 page 4 is indicated at the right-hand side, top corner,
11 page 4.

12 THE COURT: Yes.

13 MR. TAHA: Your Honor, if you look at line 2,
14 you can see healthy receivables of 1,248,452. Atek was
15 not in trouble in the year 2002 financially because it
16 had that receivable and it had cash of \$1,800,000. So
17 Atek was not in distress in 2002.

18 The other line I would like to refer to
19 Your Honor is line 24. The accounting system provides
20 that the income made from the project is reported as
21 returned earnings, and that returned earning is 124.
22 So for year 2002, there's a 1,723,347, line 24.

23 I'm sorry, am I losing, Your Honor?

24 THE COURT: No, I'm following you.

25 MR. TAHA: Page 4.

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1 THE COURT: Yes.

2 MR. TAHA: Okay. So line 24, it shows the
3 returned earnings. Returned earnings is practically
4 the shareholders' earned income as ordinary income.

5 I'll take you one page back -- or two pages
6 back, back to Schedule K. This is very, very important
7 for the Court to recognize that there is no capital
8 gain whatsoever, none. If you look at -- there's a
9 line B, line B on Schedule K in the middle of the
10 Schedule K, ordinary dividends, none. This was
11 emphasized by defendant that plaintiffs' income was
12 dividend, and it was not.

13 One more statement to this, the IRS
14 specifically define S Corporation Schedule K-1 as
15 non-dividend income. Royalty income is none. Line D,
16 short-term capital gain, none. They are blank.

17 So the only income is ordinary income and the
18 interest, no capital gain. I like to emphasize this as
19 many times as I can because it's been a huge issue
20 presented by defendant.

21 Do I need to go through 1120-S for 2003?

22 THE COURT: Yes. You need to identify it for
23 the record. And the Court will admit what is
24 Exhibit A1, which I take it is the 2002 tax return.

25 MS. KANYER: All right. Your Honor, while we

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1 don't object that this is plaintiffs' retained copy, we
2 would object that this is not the filed copy. We have
3 the filed copy listed in our exhibits, the copy
4 received by the IRS as Exhibit 9.

5 THE COURT: Why do we need the as-filed copy?
6 Is it different in any way?

7 MS. KANYER: It's different in the sense that
8 it was the filed copy. And as this case is about,
9 whether or not a claim for refund was filed, we would
10 request these --

11 THE COURT: But this is the return of the
12 base company.

13 MS. KANYER: Correct. We would just like to
14 use the filed copy since this case is about filing.

15 THE COURT: And this is essentially DX-9,
16 you're saying?

17 MS. KANYER: Correct, Your Honor.

18 MR. TAHA: May I respond to this, Your Honor?

19 THE COURT: I'm sorry?

20 MR. TAHA: May I respond?

21 THE COURT: Yes.

22 MR. TAHA: This is supposed to be, according
23 to you, authenticated.

24 THE COURT: Yes, and you've just done that.
25 And I'm admitting it.

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1 MR. TAHA: So referring as to either
2 documents, wherever they are, is not practical.

3 THE COURT: Well, we'll have
4 cross-references. We have it in the record.

5 (Plaintiffs' Exhibit Number A1 was admitted
6 into evidence.)

7 MR. TAHA: Are we ready for 1120-S for year
8 2003?

9 THE COURT: Yes.

10 MR. TAHA: Second page, Schedule K --

11 THE COURT: Well, again, could you just
12 authenticate this for the record, please, the
13 signatures and the date and so on?

14 MR. TAHA: I'm sorry, Your Honor.

15 THE COURT: No, nothing to be sorry about.

16 MR. TAHA: On top, signature of officer, I
17 was considered an officer, that's my signature, signed
18 on March 13, 2004. And under that signature is the CPA
19 signature signed on March 12, 2004.

20 THE COURT: Thank you.

21 MR. TAHA: Page 2, Your Honor --

22 THE COURT: Ms. Kanyer, is this PX-A2?

23 MS. KANYER: PX-A2, yes, Your Honor.

24 THE COURT: All right. Thank you.

25 MS. KANYER: Your Honor, can I make a

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1 reference point? So the PDFs correspond through
2 this -- it's one document, so the PDFs will go
3 consistently throughout. And so it might be helpful to
4 look at the PDF numbers to direct attention. It might
5 just be easier for Mr. Taha.

6 MR. TAHA: Your Honor, I believe I forgot --

7 THE COURT: I'm not sure I understand what
8 you're driving at.

9 MS. KANYER: This document was filed attached
10 to plaintiffs' pretrial memo as one document, so this
11 actually goes from one -- PDF page 1 to 106, and so the
12 PDF numbers correspond to the number in plaintiffs'
13 trial binder. So if you look in the upper right-hand
14 corner, 1120-S is PDF page 16 of 106.

15 THE COURT: I see that. Do we need to know
16 that?

17 MS. KANYER: No, no, no, I was just hoping it
18 would be helpful for everyone.

19 THE COURT: We can find it that way.

20 MS. KANYER: Yes, exactly.

21 THE COURT: There's no doubt about that.
22 Thank you.

23 MR. TAHA: Your Honor, I don't have that
24 list. I think I left it on the other desk.

25 THE COURT: I'm sorry?

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1 MR. TAHA: I don't have that list because I
2 believe I left it on the other desk.

3 THE COURT: Do you have an extra?

4 MS. KANYER: I have an extra.

5 THE COURT: That's helpful. Thank you.

6 MR. TAHA: As I mentioned earlier, I don't
7 know what these numbers mean.

8 THE COURT: No, that's fine. Ms. Kanyer is
9 about to hand it to you.

10 MR. TAHA: So, Your Honor, what was 1120-S,
11 2002, what was that identified as?

12 THE COURT: PX-A1.

13 MR. TAHA: PX-A1, is that the first one?

14 THE COURT: I'm sorry? Yes. So we've
15 already done that one, and --

16 MR. TAHA: And PX-A2 is 1120-S 2003?

17 THE COURT: Well, it's just that Ms. Kanyer
18 has helped us out a little bit by referring to these
19 PDF numbers. The first one was 4 of 106, so she has
20 PDF 4 as the introduction to it. And we're now working
21 on 2003, so that's PDF 16, that's what she means. It's
22 the 16th page.

23 That's my understanding of what you said.

24 MS. KANYER: That's correct, Your Honor.

25 THE COURT: Okay. It'll just help us find

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1 it; that's all. And you've already authenticated it,
2 Mr. Taha. You signed it; right?

3 MR. TAHA: Can I proceed, Your Honor?

4 THE COURT: Yes. I'm sorry to interrupt.

5 MR. TAHA: Schedule K, Your Honor, on page 2
6 of 1120-S for 2003, it, again, shows the ordinary
7 income and the interest income, no other income, no
8 dividends, no royalty income, no short-term capital
9 gain, no short-term capital gain or loss, no other
10 ordinary or portfolio income, no net action 1231
11 (phonetic); none.

12 Go forward to page 4 shown on the top
13 right-hand corner. As for the shareholders' ordinary
14 income, again, it showed under returned earnings. This
15 is an accounting procedure, Your Honor. That's where
16 the money goes that is being owed.

17 At that time it becomes up to me to break up
18 that returned earnings and show it as loans to
19 shareholders. But for these years, 2002, I may have
20 shown it, I broke it up. But for 2003, it stayed
21 there, as well as returned earnings. So I did not get
22 the chance to break it up between the shareholders.

23 Regardless, Your Honor, it is shareholders'
24 money. And the accounting system says returned
25 earnings is a sub-account of the major account called

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1 shareholders' entity -- I'm sorry, shareholders'
2 equity.

3 Similarly, the page after, it shows
4 Mohamad Taha's Schedule K-1 showing his ordinary income
5 and the interest and no capital gain. Several items
6 here pertaining to capital gain or capital loss or
7 dividend, so on and so forth, none. The only income is
8 ordinary income and ordinary interest.

9 If you add those numbers, Your Honor, it's
10 what was reported on taxpayers' 1040 for 2003.

11 THE COURT: May I just say to both parties,
12 the Court is generally quite familiar with Subchapter S
13 returns. It's a good thing, is all I can say, so we'll
14 go from there.

15 Go ahead.

16 MR. TAHA: No accounting, Your Honor?

17 THE COURT: I'm not an accountant, no.
18 Practical experience. Anyway, we'll go forward.

19 MR. TAHA: You can see, Your Honor, in
20 addition to Mohamad's Schedule K-1, there are also
21 Schedule K-1 for the other shareholders that followed
22 his Schedule K-1 page.

23 THE COURT: May the Court admit PX-A2?

24 MS. KANYER: Your Honor, we would have the
25 same note that DX-10 is -- Defendant's Exhibit 10 is

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1 the filed copy of the Form 1120-S for 2003.

2 THE COURT: All right. We'll take that into
3 account. Thank you, Ms. Kanyer.

4 So we're going to 28; is that correct?

5 (Plaintiffs' Exhibit Number A2 was admitted
6 into evidence.)

7 MR. TAHA: Your Honor, may I suggest
8 something?

9 THE COURT: Yes.

10 MR. TAHA: I think this part, this exhibit
11 list, it has become or it's becoming confusing, so why
12 don't we rely on what is in the exhibit list binder?

13 THE COURT: Why do you think it's becoming
14 confusing?

15 MR. TAHA: Because of the PX and the A2 and
16 the --

17 THE COURT: It's just that we have the
18 explanation of the numbers just appearing on the top
19 right of the page, it just helps us find them in the
20 pile; that's all, I think. I don't think it's
21 confusing.

22 MR. TAHA: Okay, Your Honor. I appreciate
23 that.

24 THE COURT: So the return for 2003 is
25 admitted of Atek corporation.

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1 Now, we're going to the return for 2004?

2 MR. TAHA: Yes, Your Honor.

3 THE COURT: Let's do that.

4 MR. TAHA: 1120-S, "U.S. Income Tax Return
5 for an S Corporation for Year 2004," similarly,
6 presents the same pieces of information like the
7 previous 2002 and 2003.

8 My signature is on the top filed on
9 November 15, 2012, as an amended return.

10 Second page, Your Honor, Schedule K, it shows
11 the ordinary income as a loss of 3,873,786; that was a
12 loss. That was because Atek was dissolved in October,
13 2004 on the grounds that it was forced into dissolution
14 by the bonding companies. So, therefore, it incurred
15 these losses.

16 It's a fact that Atek did experience
17 financial difficulties around September/October, 2004.
18 In the beginning of the year, Atek was healthy,
19 financially. It's all because -- I mentioned in my
20 opening statement because the project owners delayed
21 for whatever reason \$5 million of Atek's receivables.
22 Atek could not operate by delaying its receivables, so
23 it exhausted whatever it had in reserve.

24 So, again, Your Honor, Schedule K does not
25 show annual losses in capital dividends, long-term or

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1 short-term capital, et cetera; none. Only two line
2 items of income and/or loss.

3 Going forward --

4 THE COURT: Well, may I ask a quick question.
5 Why was it filed, this return filed as an amended
6 return in 2012?

7 MR. TAHA: Because of, I believe I would say,
8 two reasons, if not more. One, Atek did not intend to
9 file an income tax return when it knew that it was
10 taken over by the bonding companies. That probably was
11 not the right thing to go forward with because Atek
12 would have or is obligated to file income taxes,
13 whether it's a gain or a loss.

14 So when it was filed, it was filed late, I
15 believe, in 2012 by Eyad Khalil. I was not in
16 California at the time, I was living in Florida. So
17 Eyad took the responsibility and had it filed in the
18 year 2012.

19 Somehow it came to my attention when it was
20 filed, I noticed Eyad claimed the sole shareholder of
21 Atek. Really? So he made a mistake, or maybe his CPA
22 made a mistake. It's the same CPA who prepared all
23 these 1120-S, so I cannot tell, Your Honor.

24 All I can tell you is he made a mistake that
25 made me realize there was a mistake and filed this

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1 amendment. I was the president and officer of Atek.

2 Does that answer your question?

3 THE COURT: Yes.

4 May I admit the return for 2004?

5 MS. KANYER: Your Honor, we would have the
6 same objection. We don't mind that it's the retained
7 copy, but we would object that it's not the filed copy.

8 THE COURT: Admitted. We'll probably end up
9 admitting the other version with a cross-reference.

10 (Plaintiffs' Exhibit Number A3 was admitted
11 into evidence.)

12 MR. TAHA: Going forward, Your Honor, for
13 Schedule K-1 for Mohamad Taha, it shows ordinary income
14 loss of negative, which is a loss, \$387,379; that is on
15 line 1 of Schedule K-1. So he lost money, or actually
16 all shareholders lost money because Atek lost the money
17 in the takeover by the bonding companies.

18 Following that page, Your Honor, you can see
19 Schedule K-1 for the remaining shareholders, three of
20 them, with the loss based on their pro rata share of
21 Atek Construction shares.

22 THE COURT: You may continue.

23 MR. TAHA: Do you want me to identify this on
24 the exhibit list?

25 THE COURT: Yes.

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1 MR. TAHA: Is that Number 28?

2 THE COURT: Well, I think we finished the A
3 series. We're about to go to the B series, I hope.

4 MR. TAHA: So it's Number 28, PDF 28?

5 MS. KANYER: Are you looking at Exhibit --

6 MR. TAHA: 2004, 1120-S.

7 THE COURT: I thought we finished with 2004.

8 MS. KANYER: I thought we did as well.

9 THE COURT: In the A series.

10 MR. TAHA: So it is identified on PX-A3,
11 PDF 28?

12 THE COURT: Yes, you had testified about it,
13 I had admitted it. I had admitted it subject to the
14 caveat that Ms. Kanyer says they have the as-filed
15 version from the IRS, but that's -- we'll take that up
16 later.

17 MS. KANYER: Your Honor, we do want to
18 clarify our objection specifically related to the
19 amended return for 2004, the 1120-S.

20 If you look at defendant's Exhibit 13, you do
21 see a different signature date than the date on the one
22 that plaintiff just offered to admit.

23 THE COURT: I think that's one of the reasons
24 the Court asked Mr. Taha the question the Court did;
25 right? You understand?

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1 MS. KANYER: Yes, Your Honor.

2 THE COURT: All right.

3 MR. TAHA: Your Honor?

4 THE COURT: Yes.

5 MR. TAHA: I believe every document in this
6 part of the exhibit should not be questionable. It
7 could be questionable, but if I respond to that
8 question -- because my confusion, Your Honor, is, we
9 compare this with what the IRS has or not have, I
10 cannot -- I cannot comprehend it.

11 THE COURT: Well, we'll have to take it up in
12 order. If we take these documents in order, then
13 Ms. Kanyer will have another set, and hopefully by that
14 time we'll have an explanation.

15 I think you gave us the explanation for the
16 2004 return that you signed in 2012 and why that might
17 have been different from that return which was filed
18 earlier. We have that on the record.

19 MR. TAHA: Yes, Your Honor. Thank you.
20 Moving to Exhibit B, Your Honor.

21 THE COURT: Yes.

22 MR. TAHA: That is Form 1040, U.S. Individual
23 Income Tax Return For Year 2002.

24 On the first page, Your Honor, it shows
25 wages, none, because neither plaintiff had wages.

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1 Line 8-A, it shows the interest that
2 taxpayers earned from Atek.

3 On line 17, Your Honor, is the S corporation
4 Schedule K-1 that they received, that number, 83,968,
5 is as shown on 1120-S, Schedule K-1, for year 2002.
6 Compare those numbers, they are exact.

7 The total gross income is \$85,010, and this
8 is the basis for the income that plaintiff received for
9 2002 and reported on 1040-X, and it was lost as bad
10 debt, this \$85,010.

11 THE COURT: Do you recognize the signatures
12 that are on the second page of this return?

13 MR. TAHA: The second page is Mohamad Taha,
14 he is a plaintiff, he signed it on 4/3/03.

15 THE COURT: Do you recognize that signature?

16 MR. TAHA: That's my brother, Mohamad Taha's
17 signature.

18 THE COURT: All right.

19 MR. TAHA: I helped him prepare this income
20 tax return.

21 THE COURT: I'm sure that was what Ms. Kanyer
22 was going to ask you, and I was thinking about asking
23 you but decided not to.

24 MR. TAHA: He was living in the
25 United States, he was living with me during that year.

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1 THE COURT: Because he's listed as a
2 California address; is that correct? Mission Viejo?

3 MR. TAHA: Oh, yes, Your Honor. That's where
4 I lived at the time, and he lived with me.

5 Again, on this first page, Your Honor, no
6 income amounts identified as ordinary dividend or
7 capital gains or losses, none or no gain; none.

8 THE COURT: May the Court admit the document
9 identified as PX-B1?

10 MS. KANYER: We would have the same
11 objection, Your Honor.

12 THE COURT: Same objection? Do you have the
13 return as filed?

14 MS. KANYER: We do have the return as filed.

15 THE COURT: Admitted with that caveat.

16 (Plaintiffs' Exhibit Number B1 was admitted
17 into evidence.)

18 THE COURT: So now we go to 43; is that
19 correct?

20 MR. TAHA: Form 1040, "U.S. Individual Tax
21 Income Form for the Year 2003" was filed on
22 April 14, 2004, signed by Mohamad Taha, who was a
23 brother, and his wife, Sanaa Yassin, both were signed
24 on April 14, 2004.

25 I asked them to sign them because they were

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1 there, they were present in the United States. Again,
2 page 1 shows only two income items, one is interest and
3 one is S corporation, which is Atek's distributed
4 income of 74,566.

5 The total income, gross income, was \$77,813,
6 and that was the basis for plaintiffs' business bad
7 income because this number was lost due to Atek's
8 dissolution and takeover by the bonding companies. So
9 that was a lost income. It became worthless.

10 THE COURT: May the Court admit PX-B2?

11 MS. KANYER: Your Honor, we would have the
12 same objection. We do not have the filed copy.

13 THE COURT: You do have the filed?

14 MS. KANYER: We do not have the filed copy.

15 THE COURT: You do not have the filed copy?

16 MS. KANYER: No. We wanted the record
17 reflect that -- I think previously we said we had the
18 copy, we do not have the filed copy for 2003.

19 THE COURT: Now, I take it you will ask on
20 cross-examination Mr. Taha's knowledge of his brother's
21 and his brother's wife's filing of this return? This
22 is the base return; it's not the amended return?

23 MS. KANYER: Correct, Your Honor. So at this
24 point I did not have questions related to that, but I
25 certainly can.

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1 THE COURT: All right. PX-B2 is admitted.
2 (Plaintiffs' Exhibit Number B2 was admitted
3 into evidence.)

4 MR. TAHA: Again, Your Honor, Schedule K-1
5 from Mohamad Taha shows only two income items or
6 dividend income and interest, no capital gain of any
7 sort, whether short or long, no dividend, et cetera;
8 none.

9 I'm emphasizing these line items that do not
10 exist because they were brought up by the Court and by
11 defendant in their motions and orders, Your Honor.

12 THE COURT: So now we go to PDF 54; is that
13 correct?

14 MS. KANYER: Yes, Your Honor.

15 MR. TAHA: Are you ready for me, Your Honor?

16 THE COURT: Yes.

17 MR. TAHA: Thank you.

18 Exhibit C is Atek's promissory notes and
19 transaction --

20 THE COURT: I'm sorry. I thought we were
21 going to PX-B3, PDF 54. We might as well go through
22 this, but if you want to switch to Exhibit E. -- all
23 right. Let's -- you go ahead. You're talking about
24 Exhibit E; is that correct?

25 MR. TAHA: Your Honor, I thought PDF --

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1 PX-B3, PDF 54 is year 2004.

2 THE COURT: Yes.

3 MR. TAHA: And now we go to PX-C1, PDF 58 --

4 THE COURT: Well, let's talk about PX-B3,
5 PDF 54, because this is a different address for your
6 brother and his wife. Of course your brother was
7 deceased at this point, and your brother's wife had
8 signed it, it looks like, on October 21, 2011.

9 And you might testify of your own personal
10 knowledge why this was submitted, if it was submitted,
11 and why it was submitted at the time it was submitted?

12 MR. TAHA: Do you want me to testify now?

13 THE COURT: Yes.

14 MR. TAHA: Year 2004 -- in year 2004, Atek
15 incurred losses. Mohamad Taha, as a taxpayer, received
16 Schedule K-1 shows the loss -- the income as a negative
17 number, which was a loss.

18 So at the time when that occurred, when year
19 2004 1120-S came to my knowledge, when it was filed
20 originally and then re-amended, I presumed at the time
21 because of the loss for year 2004, Mohamad Taha did not
22 need to file an income tax return. It would have been
23 useless. It's still useless.

24 However, Your Honor, after I filed the 1040-X
25 under year 2004, the IRS requested me -- or requested

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1 the taxpayers to file 1040, which is this (indicated),
2 in order to consider the 1040-X.

3 THE COURT: Did you have a role in the
4 preparation of this return?

5 MR. TAHA: Yes, Your Honor, I have -- yes,
6 Your Honor, I do.

7 THE COURT: All right. May the Court admit
8 PX-B3, Ms. Kanyer?

9 MS. KANYER: Same objection. We object that
10 this is the retained copy and not the filed copy, which
11 we do have.

12 THE COURT: All right. Thank you. It's
13 admitted subject to that caveat.

14 (Plaintiffs' Exhibit Number B3 was admitted
15 into evidence.)

16 MR. TAHA: I would like to make a statement
17 in regard to preparation of these income tax returns.

18 First, Mohamad or his wife had no knowledge
19 of any of -- of any of filing income taxes. They had
20 no knowledge. The only thing Your Honor said -- this
21 is a question they asked me, "Why do we have to pay
22 taxes? We never paid taxes back where we lived at the
23 United Arab Emirates."

24 I said, "This is the law. We all pay taxes.
25 Whether we like it or not, we have to pay taxes."

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1 So, Your Honor, not knowing what to do or
2 what to report, I had to help him with this. I knew
3 the laws, so I helped them. So I prepared it for them
4 and, where necessary, I asked them to sign.

5 After some time in the year 2004 -- never
6 mind, Your Honor.

7 Moving forward, Your Honor, to Schedule C.

8 Schedule C, Your Honor, is a promissory note
9 for -- there are two promissory notes, one for year
10 2002 income that Atek Construction owed to the
11 shareholders, and the other promissory note is the
12 income that Atek Construction owed for year 2003.

13 This promissory note from what I have seen so
14 far, Your Honor, have become a big issue or a hurdle,
15 which I do not understand. I formulated these
16 promissory notes as a president and secretary of Atek
17 Construction. I had the right, I had the experience
18 how to formulate these promissory notes, and there's
19 nothing that I can see is wrong with them.

20 Contrary to what defendant has been claiming
21 all along, they are not good, Mr. Taha wrote those
22 promissory note, so on and so forth. A promissory note
23 is simple. It can be worded any way, as long as it's
24 clear and satisfies the intent of promissory note
25 content.

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1 So here in this promissory note for year
2 2002, Atek promised Mohamad Taha and others, but
3 specifically promised Mohamad Taha to pay him \$84,935
4 that Atek owed and lost because of the bonding
5 companies' takeover, and, therefore, Atek was
6 dissolved.

7 Similarly, for year 2003, Your Honor, second
8 page, Atek promised to pay shareholders, including
9 Mr. Mohamad Taha, \$77,708. That income was lost again
10 in a takeover -- in the takeover by the bonding
11 companies when Atek, therefore, dissolved.

12 THE COURT: Ms. Kanyer, may the Court admit
13 PX-C1 and PX-C2?

14 MS. KANYER: No objection, Your Honor.

15 THE COURT: Admitted.

16 (Plaintiffs' Exhibit Number C1 was admitted
17 into evidence.)

18 (Plaintiffs' Exhibit Number C2 was admitted
19 into evidence.)

20 MR. TAHA: Going forward to a document by
21 Atek Construction called Transactions By Account. This
22 transaction, Your Honor, essentially shows the
23 profit -- we called it profit distribution or earned
24 income, but it's all the same terminology.

25 The third item, Your Honor, it shows

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1 Mohamad Taha's profit distribution for year 2002,
2 \$84,935. This is the number, whether it's exact or
3 maybe a few dollars of difference, was reported on
4 Mohamad Taha's and his wife's joint income tax return
5 for 2002, was reported as \$85,010, it shows here
6 84,935. It's practically the same number.

7 Out of that profit distribution, Your Honor,
8 Mohamad was paid \$12,000. It's the second number with
9 a check mark on the right-hand side, Your Honor. Under
10 that item, Your Honor, Mohamad was paid for 2002,
11 another \$3,000.

12 These payments were credited to the year 2002
13 profit distribution, which was \$85,000 or 84,935, as
14 stated above. That's where that distribution come
15 from.

16 So the third item of income that he received
17 was \$5,000, again, identified with a check mark on the
18 right-hand side. Those three items of income
19 distributed to Mohamad Taha was for him to be able to
20 pay his taxes plus.

21 The second item from the bottom, how do I
22 call it, the item before last at the bottom, it shows
23 Mohamad Taha's profit distribution for 2003, \$77,708.
24 That also was reported on his Form 1040 for year 2003.

25 The next page, Your Honor --

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1 THE COURT: Well, may I admit -- this is
2 identified as PX-C3?

3 MS. KANYER: No objection, Your Honor. C3
4 also goes to the next page as well. So no objection to
5 that page.

6 MR. TAHA: I'm sorry, Your Honor, what do I
7 understand about objection again?

8 THE COURT: No, it's not a problem. It's
9 just we haven't covered what is marked as page 61 in
10 the upper right.

11 MS. KANYER: Correct.

12 THE COURT: If you could cover what page 61
13 on the upper right is, that would satisfy the concern
14 at the time.

15 MR. TAHA: I see, Your Honor, you're
16 referring to these page numbers on -- on identification
17 of each document?

18 THE COURT: Yes.

19 MR. TAHA: So you would like for me --
20 instead of saying --

21 THE COURT: This is a document headed Tahas'
22 Financials, Income, and Expenses January 1, 2002
23 through September 6, 2006. You were about to talk
24 about that in any event.

25 MR. TAHA: Yes, Your Honor.

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1 THE COURT: Why don't you go forward and do
2 that.

3 MR. TAHA: This document is called "Tahas'
4 Financials, Income and Expenses, January 1, 2002
5 through September 6, 2006." This is a comprehensive
6 that I prepared, comprehensive to all the Tahas'
7 receipt of money from Atek and other expenditures that
8 are not shown here because they are not relevant to
9 this first page or relevant to this case.

10 If you look at line 14, Your Honor, it says,
11 "For profit Mohamad Taha," parentheses, "for profits
12 earned and taxed, \$162,543." This number, Your Honor,
13 I stated this number in my opening statement which --
14 which comprises of two incomes for 2002 and 2003.

15 If you add the \$85,010 and 77,000 plus, if
16 you add those two numbers, they equate to \$162,543.
17 This is a -- it's a comprehensive numbers that are
18 added for year 2002 and 2003.

19 So he was paid \$20,000, as you see on
20 line 17; that's what he was paid. And we already
21 talked about that in Atek's transaction previous
22 document.

23 THE COURT: Who prepared this sheet?

24 MR. TAHA: I did.

25 THE COURT: Okay.

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1 MR. TAHA: And this is a legal document,
2 Your Honor, legal in this court and legal in previous
3 courts.

4 THE COURT: All right. Ms. Kanyer?

5 MS. KANYER: No objection to this document.
6 I have no knowledge of the legality of it.

7 THE COURT: PX-C3 is admitted.

8 (Plaintiffs' Exhibit Number C3 was admitted
9 into evidence.)

10 MR. TAHA: On line 16, Your Honor, comparing
11 to line 16, there is an item -- there is a number of
12 142,543. This is the net or the balance that Atek owed
13 plaintiffs; 142,543, and this document, again, and
14 everywhere in motions and objections, so on and so
15 forth. That is the number, what I called -- again,
16 this is my terminology, Your Honor, that number, I
17 called it seized by petitioners at that time. And
18 those petitioners were the bonding companies.

19 Go forward, Your Honor?

20 THE COURT: Yes, please.

21 MR. TAHA: Exhibit D. I love this exhibit,
22 Your Honor. This is the heart of this action, plus
23 others. Is that okay, Your Honor? I'm trying to get a
24 relief, Your Honor, if that's okay with you?

25 THE COURT: You want to take a break?

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1 MR. TAHA: I'm trying to get a relief, if
2 that's okay with you?

3 THE COURT: What kind of relief?

4 MR. TAHA: By saying I like to see Ms. Kanyer
5 smiling.

6 THE COURT: Well, we all like to see people
7 smiling, even Mr. Pincus, but he does so rarely, but it
8 helps.

9 MR. PINCUS: If I might, I think that the
10 relief could be left to the Court perhaps rather than
11 the witness.

12 THE COURT: We're not talking about legal
13 forms of relief, I don't think.

14 MR. TAHA: Right.

15 THE COURT: Okay. We're on Exhibit D and how
16 did you come to become familiar with this document,
17 Mr. Taha?

18 MR. TAHA: I was still living in California,
19 and I was still president in Atek Construction's
20 offices, or office. I was still president. And Atek
21 was copied with these letters. They were addressed to
22 the project owners, but they were copied or they were
23 filed. I do not recall if they were filed with the
24 complaints, but I was aware of it in the year 2004
25 around October -- in October, 2004.

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1 So the first letter, Your Honor, from one
2 bonding company by the name of Hartford Insurance,
3 Hartford Fire Insurance Company, or the Hartford. It's
4 addressed to a project owner by the name of Huntington
5 Beach Union High School District. And the project that
6 Atek was working on for this school district was called
7 "Huntington Beach High School fire alarm system
8 upgrades." Atek was working on that contract.

9 What Hartford did in the middle of the third
10 line, third paragraph, what it says "At this time,
11 however, Hartford demands that you" -- referring this
12 demand to Huntington Beach Union High School District,
13 "you release no further funds under the
14 above-referenced contract without the advanced written
15 consent and direction of Hartford."

16 This is one document that brought Atek down,
17 and, therefore, dissolved.

18 The second letter, Your Honor, again, it is a
19 demand by Hartford Fire Insurance Company addressed to
20 Huntington Beach Union High School District, which is
21 the same project owner as the previous document. And,
22 again, Your Honor, this project is identified as
23 "Huntington Beach High School modernization."

24 And Hartford Fire Insurance Company demanded,
25 quote, "At this time, however, Hartford demands that

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1 you release no further funds under the above-referenced
2 contract without the advanced written consent and
3 direction of Hartford." This also compounded the
4 dissolution of Atek.

5 The third document, Your Honor, is another
6 letter by Hartford Fire Insurance Company addressed to
7 another owner by the name of Anaheim Union High School
8 District. And the project name was "Lexington Junior
9 High School modernization," Bid Number -- so and so,
10 Bid Number 20054-31.

11 Again, Your Honor, third paragraph, that
12 Hartford Fire Insurance Company demanded by stating at
13 this time, "However, Hartford demands that you release
14 no further funds under the above-referenced contract
15 without the advanced written notice and direction of
16 Hartford." That also compounded the reason for Atek's
17 dissolution because of the bonding companies' takeover
18 of Atek.

19 The next letter, Your Honor, is by The Insko
20 Dico Group. I didn't know that name at the time when
21 we had bonding from what they call Developers Surety
22 and Indemnity Company. So we knew Developers Surety
23 and Indemnity Company, and I addressed this name as
24 such in this action.

25 Similarly, Your Honor, they addressed the

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1 letter by the name to Fontana Unified School District.
2 And the project name is "A.B. Miller High School wing
3 addition."

4 And the second paragraph, Your Honor,
5 "Developers demanded "Fontana Unified School District,
6 please consider this letter as notice to Fontana
7 Unified School District that no progress payments of
8 contract funds are to be made to Atek on this project
9 without the expressed written consent of Developers
10 Surety and Indemnity Company. Please acknowledge
11 receipt of directive in writing."

12 That also compounded the reason for Atek's
13 dissolution. At this time, Your Honor, Atek did not
14 receive any money for its receivables. And as I
15 mentioned in my opening statement, there was
16 multimillion dollars in receivables that project owners
17 delayed and paid Atek, therefore, Atek was dissolved in
18 the takeover by the bonding companies because the
19 bonding companies by this time, Your Honor, right after
20 these letters took over Atek.

21 Now, the bonding companies' contractual
22 agreement is that they would be responsible to complete
23 the project if the contractor defaulted. And, of
24 course, the contractor in this case did not default.
25 They were forced into dissolution.

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1 So at that time, Your Honor, the creditors
2 and others, like material suppliers, contractors,
3 subcontractors, et cetera, who were owed money by Atek
4 complained to the bonding company. Now, the bonding
5 companies have to comply and pay these creditors. It's
6 an obligation contractually.

7 So, therefore, the bonding companies took
8 over Atek such that they would pay these creditors. I
9 do not know what they paid or when they paid; it was
10 the bonding companies' property or became the property
11 of the bonding companies at that time.

12 THE COURT: Ms. Kanyer, may the Court admit
13 Documents D1, D2, D3, and D4?

14 MS. KANYER: No objection.

15 THE COURT: Thank you. Admitted.

16 (Plaintiffs' Exhibit Numbers D1 through D4
17 were admitted into evidence.)

18 MR. TAHA: The next document, Your Honor,
19 I'll follow your directions by saying page 71 of 106,
20 this page, Your Honor, is a summons page. And it was
21 stamped by the Court and initiated by Hartford Fire
22 Insurance Company.

23 Attached to the summons, there's a complaint
24 that was filed in the United States District Court
25 Central District of California, a complaint for breach

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1 of indemnity agreement, specific performance of
2 indemnity agreement, statutory reimbursement money
3 paid, so on and so forth, Your Honor.

4 So these documents are the basis and
5 selection of volumetric document that Hartford Fire
6 Insurance Company filed with the Court. Because it was
7 volumetric, I opted to attach these as exhibits page
8 for the summons and the complaint.

9 If necessary, Your Honor, I would provide the
10 full volume of the complaint. But I believe because,
11 Your Honor, the bonding company, from what I have seen
12 in their response to counsel's request to produce
13 documents, they did not produce this document.

14 THE COURT: Ms. Kanyer?

15 MS. KANYER: Your Honor, we do not object to
16 these documents. We do note, as you have as well, that
17 they're not the complete document. But we do not
18 object to these documents.

19 THE COURT: All right. The first one appears
20 to be the Hartford summons and the first page of the
21 complaint. And the second is the Developers Surety and
22 Indemnity Company's complaint. The summons is the
23 first page, and the first page of the complaint is the
24 second.

25 These are the documents that Atek received,

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1 Mr. Taha?

2 MR. TAHA: Yes, Your Honor, because Atek was
3 sued, so, yes.

4 THE COURT: May the Court admit Exhibits E1
5 and E2, Ms. Kanyer?

6 MS. KANYER: No objection, Your Honor.

7 THE COURT: Admitted.

8 (Plaintiffs' Exhibit Numbers E1 and E2 were
9 admitted into evidence.)

10 MR. TAHA: Similarly, Your Honor, and
11 Counsel, page 73 of 106 is a summons filed by
12 Developers Insurance Company. And attached to that
13 summons was page 74 of 106, which is Developers'
14 complaint in the Superior Court of the state of
15 California for the County of Orange.

16 Again, this document is also, which is a
17 complaint of a lawsuit filed by Developers against Atek
18 and its primary shareholders. And the primary
19 shareholders, Your Honor, is me, Ali Taha, and
20 Eyad Khalil.

21 THE COURT: All right. That document has
22 been admitted. I was curious why in the world Hartford
23 filed in the federal district court and Developers
24 filed in superior court, but that is a question for
25 another day and is irrelevant to the proceedings today.

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1 MR. TAHA: I can give you an unreliable
2 reason.

3 THE COURT: All right.

4 MR. TAHA: And that is, one bonding company
5 exists in such and such location near the court, and
6 the other bonding company resides in a different
7 location that is closer to a different court.

8 THE COURT: Well --

9 MR. TAHA: Yes, Your Honor.

10 THE COURT: Let's move on to Exhibit F.

11 MR. TAHA: Exhibit F, page 76 of 106, it is
12 titled "Final Judgment on Plaintiffs' First Cause of
13 Action for Breach of Indemnity Agreement."

14 The reference to "Plaintiffs" is Hartford
15 Fire Insurance Company. And this final judgment was
16 issued to Hartford Fire Insurance Company on
17 January 24, 2006, as stamped on top of the page by the
18 Court.

19 This document also compounded to the loss of
20 Atek business.

21 THE COURT: Ms. Kanyer, may the Court admit
22 Exhibit F?

23 MS. KANYER: Your Honor, we do have the
24 two-page document, Defendant's Exhibit 26, so we
25 would -- it is the same document, but we have the

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1 completed version at 26.

2 THE COURT: All right. We'll admit on a
3 provisional basis Exhibit F. We'll wait for the
4 complete document as part of the Government's case.

5 (Plaintiffs' Exhibit Number F was admitted
6 into evidence.)

7 THE COURT: Let's move to Exhibit G.

8 MR. TAHA: Exhibit G comprises of three years
9 of unlimited income tax returns. Page 78 of 106,
10 Form 1040-X, which is an "Amended U.S. Individual
11 Income Tax Return for Year 2002."

12 It is signed by Mohamad Taha's wife,
13 Sanaa Yassin, because Mohamad was deceased at that
14 time. She filed it on November 9, 2007, and he died in
15 August, 2007.

16 This amended income tax return, Your Honor,
17 it shows on column 1 the original amount of the
18 original return, which is Form 1040. It shows the net
19 change, which the net change is the loss that
20 Mohamad Taha incurred because of Atek dissolution. And
21 out of that, column C, is \$20,000. He was paid that
22 \$20,000 as a correct amount.

23 Let me flag this number, Your Honor.
24 Defendant claimed that this \$20,000 was not paid tax
25 on. It is reported in here and the net taxable income

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1 shows zero. So, therefore, that \$20,000 became
2 nontaxable because there is no income or gross income
3 on line 10.

4 This is mathematics, Your Honor. You report
5 the original numbers, line 10 as an example, column A,
6 it shows what the taxpayers paid, 8,573, and the net
7 change is negative \$8,573 because plaintiffs are
8 requesting this refund. So the tax -- total tax is
9 zero.

10 Line 5 above, Your Honor, you can look at the
11 taxable income is zero, even though \$20,000 is included
12 above in those numbers, those four numbers, but the net
13 taxable income is zero. So, therefore, \$20,000 did not
14 need to be taxable because of the losses that Mohamad
15 and his wife incurred.

16 Line 23 is the amount considered to be owed,
17 and requested for refund is 8,573.

18 THE COURT: Did Ms. Sanaa Yassin have
19 assistance in preparing this net of return?

20 MR. TAHA: Yes, Your Honor, I did assist in
21 every document they filed. Because, as I mentioned
22 earlier, they did not have the education, they did not
23 have the language proficiency; therefore, I -- and
24 being my responsibility, Your Honor, as I indicated
25 earlier, I had to help them. They didn't have money to

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1 go to an outside help.

2 THE COURT: All right. That covers 2002's
3 amended return.

4 2003 is on page 80; is that correct?

5 MR. TAHA: Yes, Your Honor.

6 THE COURT: That appears to be dated the same
7 date as the amended return for 2002; is that correct?

8 MR. TAHA: That's correct, because, Your
9 Honor, both 2002 and 2003 were filed simultaneously. I
10 know that for sure, they were filed simultaneously, and
11 taken to the post office either by myself or my --
12 whoever at the time, most likely myself, because
13 plaintiffs didn't have transportation, they didn't know
14 where the post office is. I have to help them with
15 that.

16 So I know for sure 2002 and 2003 were filed
17 simultaneously. And I will prove later that the IRS
18 seemed to have insisted on ignoring my reminder letters
19 of the 2003. They would not give me a reason why the
20 2003 was ignored.

21 THE COURT: To the best of your personal
22 knowledge, were they filed in the same envelopes or
23 different envelopes?

24 MR. TAHA: I would assert, based on my
25 experience, they were filed separately. Now,

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1 regardless of -- in my opinion, Your Honor, they were
2 filed simultaneously on the same day.

3 Going forward, Your Honor, Document 80 of
4 106, it's 1040-X for Amended U.S. Individual Income Tax
5 Return for 2003. I thought we talked about this.

6 THE COURT: We did.

7 MR. TAHA: Am I going back to it?

8 THE COURT: Yes.

9 MR. TAHA: My apologies.

10 The next document is Form 1040-X Amended U.S.
11 Individual Income Tax Return identified as page 82 of
12 106. And this is for year 2004.

13 THE COURT: And this has a different date; is
14 that correct?

15 MR. TAHA: This was filed on
16 November 1, 2009.

17 THE COURT: And how did you become familiar
18 with this document?

19 MR. TAHA: The 1040-X?

20 THE COURT: Yes.

21 MR. TAHA: I became familiar with it when I
22 received Form 1120-S for year 2004 that incurred losses
23 or reported losses, so I had to report it under year
24 2004 as or in lieu of 2002 and 2003.

25 There is a reason, Your Honor. 2002 and --

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1 2002 was denied or disallowed. 2003 was ignored. On
2 that basis, I decided I want to file their income tax
3 refund under year 2004 for the single reason, which is
4 the year within which the income became bad debt.

5 The IRS Code 6511(d)-1 asserts this fact that
6 tax refund -- tax refund within -- filed within the
7 seven-year statute should be filed within the year the
8 debt became worthless. And this is the year, because
9 Atek was dissolved in 2004.

10 One more thing, Your Honor. Defendant
11 asserted in its contentions and its memorandum of
12 contentions of fact on law, they allege that a refund
13 claim should be filed within the year the overpayment
14 occurred, and that means 2002 and 2003. You cannot
15 have it both ways, Your Honor. I mean not you
16 directly, sorry.

17 So if that is the case, then the 2002 and
18 2003 as filed, they were correct, for the -- based on
19 the allegation defendant made. I think the 2004
20 complies with the seven-year statute and year 2004 is
21 the year within which the debt became worthless.

22 2004, Your Honor, this amended income tax
23 return, it shows basically there is no income in
24 column 1, which is the original amount, which is 1040,
25 Form 1040 did not have any income, therefore, this

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1 column is blank. And the net change is what the
2 taxpayers lost, which is 142,823; that is the net
3 change. And the correct amount, Your Honor, is the
4 same, it's a loss of \$142,823.

5 If you go all the way down, Your Honor, it's
6 on all these numbers reported, line 23, it shows amount
7 applied to your estimate -- no, I'm sorry, line 23,
8 Your Honor, it shows amount of tax refunded to you --
9 oh, my apologies, Your Honor. It says amount of
10 line 22 you want refunded to you, 14,177. And this is
11 the same number that was reported by plaintiffs for tax
12 refund.

13 If you go forward, Your Honor, to page 84 of
14 106, I prefer this to supplement the 1040-X, to
15 supple- -- to identify what changes have been made on
16 the front page of 1040-X. And this page is here, as
17 called it, explanation of changes to income,
18 deductions, and credits.

19 And I explained the item that we showed on
20 the front of 1040-X form. It explains what changes
21 were made. And you come up with Bullet Number 3 in the
22 middle of the page, Bullet Number 3 at the top, which
23 says "Deduct total loss as bad debt from lines above,
24 4,289 plus 138,536 equals 142,853 (sic). And this is
25 the subject amount that plaintiffs lost and never

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1 received. And this is the number that plaintiffs paid,
2 14,177, in taxes on it.

3 THE COURT: All right. Because you prepared
4 this, may I ask, Ms. Kanyer, if you would agree to the
5 admission of the three exhibits he documents?

6 MS. KANYER: We would have the same objection
7 that these are the retained copies and not the filed
8 copies.

9 THE COURT: That's true. Do you have the
10 filed copies?

11 MS. KANYER: We have the filed copy for the
12 2002 and 2004, but we, of course, do not have the filed
13 copy for 2003.

14 THE COURT: So we're at the same position we
15 were before. All right. Thank you.

16 The three documents, PX-G1, -G2, and -G3, are
17 admitted.

18 (Plaintiffs' Exhibit Numbers G1, G2, and G3
19 were admitted into evidence.)

20 THE COURT: Shall we go for another few
21 minutes, or do you want to take a break now, Mr. Taha?

22 MR. TAHA: I can go on, Your Honor.

23 THE COURT: You can? Are you sure?

24 MR. TAHA: Yes, Your Honor.

25 THE COURT: All right. We shall. We'll

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1 cover Exhibits H and I then.

2 MR. TAHA: Do you want to go through until
3 5:30, Your Honor?

4 THE COURT: What?

5 MR. TAHA: I'm ready to go through until
6 5:30.

7 THE COURT: Well, let's not do that. We're
8 going to take a luncheon break, but your stamina is
9 impressive, Mr. Taha.

10 MR. TAHA: Page 85 of 106, Your Honor, on
11 that same Exhibit Tab G, again --

12 THE COURT: I thought we had finished --

13 MR. TAHA: It's Schedule K-1. And it shows
14 the ordinary -- ordinary loss that Mohamad incurred of
15 negative 387,379. This supplements the 1040-X as a
16 proof of what Mohamad received in income or loss.

17 Exhibit H, this is page 87 of 106. This is a
18 letter from the IRS to taxpayers Mohamad Taha and
19 Sanaa Yassin dated December 20, 2007. And the title of
20 this letter is for tax year December 31, 2002.

21 And the letter says, "We could not allow your
22 claim." And they explained why they did not allow the
23 claim.

24 At the bottom, Your Honor, the first dashed
25 item or bullet item, the reason for disallowing the

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1 claim is the allegation that the IRS received the claim
2 late. That means they received it later than the three
3 years from the return due date of a family filed
4 unextended return.

5 This three years is not applicable for
6 business bad debt, the seven years is. And plaintiffs
7 insisted on -- I insisted on their behalf, as well
8 documented, that this period is not applicable; the
9 seven years is, if it is.

10 Similarly, Your Honor, which I missed, if it
11 is not three years from the return due date as being
12 filed late, it is two years after you pay the tax.
13 Actually, one or the other reason, it's the same.

14 The next document, Your Honor, is page 92 of
15 106. This letter, I wrote this letter, Your Honor.
16 Ms. Sanaa Yassin would never be able to write a letter
17 like this because of the reason I expressed earlier.
18 This letter, Your Honor, is dated January 21, 2008.
19 It's addressed to the Internal Revenue Service in
20 Fresno, California. The subject of the letter,
21 Your Honor, is "Mohamad Taha and Sanaa Yassin" with tax
22 identification number, and the reference to the IRS
23 letter of this allowance, which we talked about
24 earlier, and that letter number is identified as
25 "LTR105CE0," this reference number on the disallowance

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1 letter by the IRS.

2 And, again, in the subject title, it says,
3 "Tax Period December 31, 2002, 2003." I'm telling the
4 IRS, Your Honor, you'll ignore 2003 here and I'm
5 reminding you of it. It's a reminder. No response
6 whatsoever from the IRS in regards to 2003. They
7 ignored it.

8 Just to supplement this letter, Your Honor, I
9 believe this was like an appeal letter by taxpayers.
10 It was followed by a letter from the IRS appeals office
11 that I did not include in here.

12 It was followed -- the first disallowance by
13 the IRS was followed by another disallowance. I don't
14 recall if I attached it to previous motions, but that
15 letter that I received from the appeals office was in a
16 similar content that they disallowed the claim for tax
17 refund on the basis of receiving the claim three years
18 from the return due date, and they ignored the 2003
19 income tax return that I filed simultaneously with
20 2002.

21 Attached to this letter, Your Honor, I
22 received a notice of possible dividend, an order fixing
23 time to file claims from the United States Bankruptcy
24 Court, Central District of California in regards to
25 debtor Eyad Khalil.

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1 Eyad Khalil at the time filed bankruptcy, and
2 the United States Bankruptcy Court issued this notice
3 of possible dividend to all creditors of Eyad Khalil or
4 creditors of Atek Construction.

5 Now, at this time, Your Honor -- and I will
6 express it simply, that taxpayers Mohamad Taha and his
7 wife, Sanaa Yassin, were hopeful that they would get
8 something out of this. There was nothing in the
9 bankruptcy, not a dollar or a penny.

10 So this document was filed in compliance with
11 the notice by the United States Bankruptcy Court, and
12 the taxpayers filed what you call here is a claim or a
13 proof of claim that's page 94 of 106. That's what the
14 taxpayers filed with the notice of possible dividends
15 in Eyad Khalil's bankruptcy.

16 They claim, in the middle of the page on the
17 right-hand side corner, \$142,643. In fact, in this
18 action, plaintiffs claim \$142,823, a few dollars
19 difference.

20 Second page, Your Honor, page 95 of 106, it
21 lists a summary of basis for the claim. And the claim
22 is, like I said, the previous page, which is called
23 proof of claim. So this page, Your Honor, 95 of 106,
24 is a summary of the claim of \$142,643.

25 The first line item, it shows year, 2002,

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1 share of income performed, K-1, dated 12/31/2002.

2 Attached -- Schedule K-1 was attached for year 2002.

3 It shows the income of \$84,935.

4 The next line item, Your Honor, it shows year
5 2003, share of income per Form K-1 dated 12/31/2003
6 attached, it's also attached. And it shows share of
7 income of \$77,708.

8 The third item, Your Honor, and Counsel, it
9 shows taxpayers received partial payment on share of
10 income, Check Number 17358, dated 4/4/03, attached.

11 I'm sorry, I missed one line item above.
12 That line item above is taxpayers received \$12,000, and
13 that is the same number that we have reviewed earlier
14 in Atek's transaction account.

15 The last item, Your Honor, received partial
16 payment on share of income, Check Number 18215, dated
17 October 15, 2003, attached, \$5,000. The net amount due
18 taxpayers is 142,643. And that is the same number
19 shown on the proof of claim, first page.

20 THE COURT: So no bankruptcy petition was
21 filed respecting Atek; is that correct?

22 MR. TAHA: That is correct. There is an
23 argument, Your Honor. Atek could not defend itself,
24 could not file bankruptcy. Nevertheless, Atek was
25 dissolved. There is no money to file for bankruptcy;

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1 none. This is the primary reason, two primary reasons
2 why Atek did not file bankruptcy. It would have been
3 useless and would have been nonsense.

4 THE COURT: Ms. Kanyer, may the Court admit
5 the three documents that are identified as Exhibit H,
6 H1, H2, and H3?

7 MS. KANYER: I only have H1 and H2. The
8 United States does not object to --

9 THE COURT: I'm sorry, you're right. You're
10 exactly right. I was translating I1 and I2.

11 All right. We're talking just about H1 and
12 H2. The Court asked you about that, those two
13 documents?

14 MS. KANYER: As far as H1, we would object on
15 the grounds of relevancy. It relates to 2002 and not
16 2003, and 2002 is not at issue in this case. So we
17 would object to H1. We do not object to H2.

18 THE COURT: The Court, nonetheless, will
19 admit H1 and H2.

20 (Plaintiffs' Exhibit Number H1 was admitted
21 into evidence.)

22 (Plaintiffs' Exhibit Number H2 was admitted
23 into evidence.)

24 THE COURT: Now we can go to Exhibit I,
25 Mr. Taha.

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1 MR. TAHA: Your Honor, let me make a
2 statement again in regard to the proof of claim.

3 THE COURT: Yes.

4 MR. TAHA: As I mentioned earlier, plaintiffs
5 or taxpayers were hopeful that they would get something
6 out of it. In my honest opinion, I knew at the time
7 that there was nothing in the bankruptcy to claim, but
8 in a formality fashion, I decided to make this claim on
9 their behalf.

10 I didn't know how much Eyad Khalil has in his
11 bankruptcy, but I knew at the time, at least, it was
12 something that we can hope may happen, and it did not
13 happen.

14 This does not mean, Your Honor, a downer for
15 their actual claim for tax refund in this action. I
16 filed this at the very first evidence of document for
17 the business bad debt within the seven-year statute of
18 the IRS. That is the very first document that we
19 provided for the business bad debt. We made a claim to
20 prove that the debt was bad debt, therefore, being
21 claimed in this document.

22 Again, Your Honor, the next document is
23 Schedule K-1, page 96 of 106 and page 97 of 106 for
24 2003. The first was for 2002. Those two are
25 Schedule K-1 to support the proof of claim.

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1 What I mean, Your Honor, this Schedule K-1
2 supports the proof of claim by showing the income that
3 taxpayers receive from Atek or it -- it's not really
4 income per se, it was a distributed income that they
5 never received just to attach it as a proof and support
6 of the proof of claim.

7 The next page also is a support for the proof
8 of claim, and it's identified as page 98 of 106. And
9 it shows three check stubs for a total of \$20,000 that
10 Mohamad Taha received from Atek Construction to be able
11 to pay for his taxes that he owed for 2002 and 2003.

12 Moving forward, Your Honor, page 99 of 106,
13 moving forward, Your Honor, and Counsel, to page 99 of
14 106, this is another letter dated September 24, 2009,
15 that I helped taxpayers to respond to the IRS, this
16 letter is addressed to the IRS. And the subject of the
17 letter, Your Honor, is Mohamad and Sanaa Yassin, tax
18 identification number, letter reference number
19 APCOFRCAGL.

20 This letter is in response to that reference
21 letter. And the form is Form 1040; amount of claim,
22 \$14,177, and the tax period is December 31, 2002, and
23 2003. This letter is another reminder to the IRS that
24 plaintiffs or taxpayers are claiming their tax refund
25 for both years, 2002 and 2003.

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1 It's a short paragraph, Your Honor, let me
2 read it.

3 THE COURT: We can see it.

4 MR. TAHA: I'm sorry?

5 THE COURT: We can see it.

6 MR. TAHA: You can see it. Okay.

7 Specifically, Your Honor, in the middle of
8 the paragraph, I say, "We disagree with your assertion
9 of denial and emphasize that our amended return was
10 filed timely within the seven-year statute of
11 limitation for business bad debt, and, therefore, your
12 assertion of the three years is not applicable."

13 Next page, 100 of 106, this is a similar
14 letter, Your Honor, dated November 12, 2009, addressed
15 to the Internal Revenue Service. And, again, it
16 identifies the subject letter, the subject for tax
17 period December 31, 2002, and 2003.

18 There are these two letters, the one that I
19 identified earlier and this letter here, both of them
20 were addressed to the IRS within two months. First
21 letter was addressed on September 24, 2009, and the
22 second one, which is this one, November 12, 2009. It
23 addressed the same subject to the IRS.

24 All these letters, Your Honor, they are solid
25 proof of reminding the IRS that the 2002 and 2003 were

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1 filed. Did I get -- or did taxpayers get any response
2 in regards to years 2003? No, none. If -- in my
3 opinion, Your Honor, if the IRS -- can I say it,
4 Your Honor, the way I want to?

5 THE COURT: Yes.

6 MR. TAHA: My language is fairly good.

7 If the IRS had the integrity to address these
8 letters, to respond to these letters, they would have,
9 but they opted to ignore them, Your Honor.

10 I cannot be any clearer on behalf of the
11 taxpayers than what I have identified here. You,
12 Your Honor -- I'll retract that.

13 At this point, Your Honor, let me make a very
14 brief statement to all these documents.

15 They were not acknowledged once. They were
16 ignored in total by two sectors of -- of defendant and
17 three courts. Respectfully, Your Honor, they were not
18 acknowledged, but ignored.

19 THE COURT: This is why --

20 MR. TAHA: I will call it allegation by these
21 governmental entities that respectfully did not
22 acknowledge -- this what I call a preponderance of
23 evidence for the business bad debt.

24 THE COURT: Let's cover Exhibit I, if we can,
25 before we forget.

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1 MR. TAHA: Proceed, Your Honor?

2 THE COURT: Yes.

3 MR. TAHA: Exhibit I, page 102 of 106, this
4 letter is from the IRS to taxpayers Mohamad Taha and
5 Sanaa Yassin, dated October 15, 2019. My apologies,
6 Your Honor, this is the filing date.

7 This letter was addressed to the taxpayers on
8 March 22, 2016. And there's a reference to it such
9 that we indicate that reference in my responding
10 correspondence to the IRS. This letter, Your Honor,
11 came from Joseph Dianto, he's an agent of the IRS. And
12 he -- according to his letter, he is a field director,
13 accounts management department.

14 This letter is very, very important,
15 Your Honor, and Counsel. For the same reasons of not
16 acknowledging or ignoring taxpayers' preponderance of
17 evidence they provided, here's what they said, "We
18 are" -- I'm quoting, Your Honor, what the IRS is
19 responding with to the taxpayers.

20 "Dear Taxpayer, we are unable to process your
21 claim for the tax period shown above."

22 And that tax year shown above, Your Honor,
23 and Counsel, is tax period December 31, 2004.

24 "The issue is unallowable because the
25 deductions are based on monies not paid to you that you

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1 maintain you were owed. There is no basis in the law
2 for taking a loss for income that was never paid in the
3 first place."

4 And my response to that, really?

5 And they continued, "The bad debts statute of
6 seven years is correct, and the claim would be worthy
7 of reconsideration if there had been actual bad debt."

8 There was actual bad debt, but ignored by the
9 IRS. Another thing, Your Honor, in this regard, the
10 IRS cannot have it both ways. The taxpayers' claim,
11 Your Honor, was filed on the basis of seven years for
12 business bad debt. Both reasons are attached or in
13 conformance with each other. Seven years for business
14 bad debt, you cannot split it here.

15 If you acknowledge the seven-year statute for
16 business bad debt and the business bad debt is part of
17 the seven years, then it's one and the same. So once
18 you acknowledge it for seven years, they should legally
19 acknowledge it for the bad debt. Nevertheless,
20 Your Honor, the bad debt was provided, but ignored.

21 This exhibit, Your Honor, was provided to the
22 IRS. It's a volume. Your Honor, I'll go back to the
23 subject title. They alleged that the date of claim
24 received, April 1, 2011. As you can see, I put a
25 question mark on it because it didn't ring a bell at

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1 that time, but later on maybe I recognized it. You
2 received it on April 1, 2011, and you acknowledged it
3 on March 22, 2016, five years after, Your Honor, and
4 Counsel.

5 Remember, Your Honor, and Counsel, what I
6 said in my opening statement about the six IRS centers,
7 the six states, the 33 agents, 12 departments, and
8 33 letters, I would like to re-emphasize that as the
9 disorganized responses and understanding by the IRS of
10 the claim. They were totally distorted and I said that
11 in my opening statement.

12 There was a distortion between the IRS state
13 centers, agents and departments, and the 33 letters.
14 None of the 33 letters addressed directly to the
15 subject matter; none. They were all pulled out of the
16 archives of the IRS, and here it is.

17 Thirteen letters, Your Honor, and Counsel
18 requested 45 days extension. And those 45 days
19 extension never been actual 45 days. Maybe 60 days
20 extension, maybe 90 days extension, whenever they felt
21 like it, they would respond. They never responded
22 within that 45 days as they stated they would respond.

23 Every time, every letter I sent, give us
24 45 days extension so we can complete our research. Ten
25 years, Your Honor, to complete their research.

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1 THE COURT: Ms. Kanyer?

2 MS. KANYER: Your Honor, we object. This is
3 not relevant and doesn't go to the issues that the
4 remand --

5 THE COURT: Well, we still have to cover
6 page 102 and following of 106. Let's do that.

7 MS. KANYER: Thank you, Your Honor.

8 MR. TAHA: Incidentally, Your Honor,
9 Mr. Dianto was subpoenaed by me to appear in this
10 trial. And you indicated in your agreement with
11 counsel that it would not be necessary or for whatever
12 other reason that you specified at the time of
13 December 2nd.

14 THE COURT: Yes.

15 MR. TAHA: During the telephonic conference
16 because I believe you indicated if this letter is here,
17 that will suffice.

18 THE COURT: That's right. And we actually
19 have, I think, as well, it looks like your response on
20 page 104; is that correct?

21 MR. TAHA: That is correct, Your Honor.

22 THE COURT: Did you ever get an answer to
23 this letter?

24 MR. TAHA: No, Your Honor. However,
25 Your Honor, I received letters after this from the IRS

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1 center in Texas, Austin, Texas, claiming that we
2 received your request for audit. I don't know if I
3 included that letter, Your Honor, but I'll be glad to
4 present it.

5 THE COURT: No, you don't have to do that.

6 MR. TAHA: We received your letter for
7 consideration for audit. And they said in the top of
8 the page, amount due, zero.

9 Then I responded to that letter by saying, we
10 never -- taxpayers never requested an audit. But the
11 fact of the matter, Your Honor, here is, what I have
12 indicated earlier how the IRS operates from one state
13 to another.

14 THE COURT: It's a big organization,
15 Mr. Taha.

16 MR. TAHA: I agree with you, Your Honor, but
17 for ten years? Not realistic.

18 THE COURT: May the Court admit PX-I1 and
19 -I2?

20 MS. KANYER: Your Honor, we would have the
21 same objection that the PX-I, PDF 102 is not relevant.
22 It's a de novo proceeding and this relates to a tax
23 year that's already been dismissed. And related to the
24 other document, we would have the same objection.

25 THE COURT: The Court will nonetheless admit

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1 them for the context. I grant you that, if these
2 relate to 2004, we're not necessarily viewing the 2004.
3 We are dealing with 2003, though. So PX-I1 and PX-I2
4 are admitted.

5 (Plaintiffs' Exhibit Number I1 was admitted
6 into evidence.)

7 (Plaintiffs' Exhibit Number I2 was admitted
8 into evidence.)

9 THE COURT: We have gone through all of
10 plaintiffs' exhibits. May we take a luncheon break?

11 MR. TAHA: Your Honor, let me make a
12 statement --

13 THE COURT: Yes.

14 MR. TAHA: -- in this regard.

15 The claim is for 2002 and 2003. I asserted
16 this to you during more than one telephonic conference.

17 THE COURT: That's true.

18 MR. TAHA: This trial, Your Honor, is a claim
19 for both years, for 2002 and 2003, whether they are
20 filed individually or they are filed under 2004, which
21 was inclusive of both 2002 and 2003.

22 I indicated this in the telephonic conference
23 to you and to counsel, and you indicated that you will
24 consider in this trial the claim in total.

25 THE COURT: Yes.

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1 MR. TAHA: Thank you, Your Honor.

2 THE COURT: You're welcome. May we take a
3 break? Given the hour, the court reporter has been
4 very patient, I must say, because we're really running
5 over time. But we did do a fair amount of the work
6 that's required in this trial. Let us take a break
7 until 2:00. Is that satisfactory?

8 MS. KANYER: Yes, Your Honor.

9 THE COURT: Mr. Taha, is that satisfactory?

10 MR. TAHA: That's satisfactory, Your Honor.
11 I would like for you to clarify one thing for me.

12 THE COURT: Yes, please.

13 MR. TAHA: Is this what you -- I'm not aware
14 or familiar with the procedure, so I'm going to clarify
15 this.

16 This presentation is Item Number 3 on your
17 final pretrial order, which says, "Plaintiff and
18 defendant shall each be allowed six hours for the
19 presentation of evidence" --

20 THE COURT: Yes.

21 MR. TAHA: -- is that what you call it?

22 THE COURT: Yes.

23 MR. TAHA: Thank you, Your Honor.

24 THE COURT: That's it. All right. We're in
25 recess until 2:00.

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1 (A break was taken.)

2 THE COURT: Ms. Kanyer, I do believe we're
3 ready for cross-examination of Mr. Taha. You may
4 proceed.

5 MS. KANYER: Your Honor, we call Mr. Taha.

6 THE COURT: Mr. Taha, if you would return to
7 the witness stand.

8 CROSS-EXAMINATION

9 BY MS. KANYER:

10 Q. Good afternoon, Mr. Taha.

11 A. Good afternoon, Ms. Kanyer.

12 Q. Mr. Taha, could I please have you turn to
13 Plaintiffs' Exhibit G2, which is at PDF 80.

14 A. Counsel, I'm having a little difficulty hearing
15 you.

16 Q. Is this better?

17 A. No, your voice is too soft.

18 Q. I will speak up. Thank you for letting me know.

19 Mr. Taha, can I please have you turn to
20 Plaintiffs' Exhibit G2, which is at PDF 80.

21 A. Is that my exhibit book?

22 Q. Yes, Mr. Taha.

23 A. Exhibit G, on what page?

24 Q. 80, 8-0. It is a Form 1040-X for tax year 2003.

25 A. Thank you. I see it.

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1 Q. You see it? Okay.

2 Mr. Taha, you testified you are Plaintiff
3 Taha's brother; correct?

4 A. Yes.

5 Q. And you assisted plaintiffs in preparing this
6 document; correct?

7 A. Correct.

8 Q. And you testified that you were the one who
9 actually prepared this Form 1040-X for tax year 2003;
10 correct?

11 A. Correct.

12 Q. Can I please direct your attention to the
13 signature on the bottom of the line above that reads
14 "Filing as surviving spouse."

15 A. It's Sanaa M. Yassin, as filing as surviving
16 spouse, on 11/9/07.

17 Q. It's your testimony that that's Ms. Yassin's
18 signature?

19 A. Yes.

20 Q. Ms. Yassin wasn't living with you in 2007; is that
21 correct?

22 A. Yes.

23 Q. She was living in the United Arab Emirates?

24 A. Yes.

25 Q. But you obtained her signature at some point

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1 before file -- before purportedly filing this document;
2 correct?

3 A. She was living at the United States at the time
4 she signed this document.

5 Q. I thought you just testified that she was living
6 in the United Arab Emirates as of November of 2007; is
7 that not correct?

8 A. In November, 2007, she was living in the United
9 States.

10 Q. So she was not living in the United Arab Emirates
11 in 2007?

12 A. Correct. She did not.

13 Q. She did not. Okay.

14 Mr. Taha, you took a deposition in this case;
15 correct?

16 A. I'm sorry?

17 Q. You took a deposition in this case; is that
18 correct?

19 A. I'm sorry, I don't --

20 Q. Do you recall taking a deposition in this case?

21 A. Me as -- as deposed?

22 Q. Correct.

23 A. You deposed me, yes.

24 Q. You recall that; right?

25 A. Yes, ma'am.

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- 1 Q. We were in Bradenton, Florida; is that correct?
- 2 A. That's correct. I'm sorry.
- 3 Q. You were under oath at that deposition; right?
- 4 A. Correct.
- 5 Q. Okay. And you were under that same oath that
- 6 you're here today; correct?
- 7 A. Correct.
- 8 Q. Okay. And you swore to tell the truth; is that
- 9 correct?
- 10 A. Correct.
- 11 Q. And you did tell the truth; correct?
- 12 A. Correct.
- 13 Q. Okay. And after you finished testifying, you were
- 14 given a copy of the transcript; is that correct?
- 15 A. That's not correct.
- 16 Q. You did not receive an e-mail copy of the
- 17 transcript?
- 18 A. I did receive an e-mail. I did not read it
- 19 because it was tedious for my eyes. It was about
- 20 150 pages. I could not review it on the computer. So
- 21 I responded to the senator of that transcript, I
- 22 believe her name is Ms. Granier (phonetic), I requested
- 23 a hard copy to be mailed to me. She never did.
- 24 Q. And you said her name was -- what was her name?
- 25 A. I believe G-R-A-N-I-E-R.

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1 Q. Okay. I just wanted to make sure. It sounded
2 like my name.

3 But you did receive that e-mail attaching the
4 transcript; is that right?

5 A. That is correct, but I did not review it.

6 MS. KANYER: Your Honor, may I approach?

7 THE COURT: With what?

8 MS. KANYER: A transcript.

9 THE COURT: Yes, you realize the Court is --
10 I was about to use the word "persnickety" on the use of
11 prior deposition testimony.

12 MS. KANYER: I did not know that.

13 THE COURT: I try to follow the rules of
14 evidence very precisely.

15 MS. KANYER: Okay. I hope that I am doing it
16 correctly.

17 THE WITNESS: Let me make another statement,
18 if you don't mind, Your Honor, and counsel.

19 THE COURT: Yes.

20 THE WITNESS: About the transcript that I
21 received by e-mail. I wear two implants in my eyes.

22 THE COURT: Mr. Taha, the Court doesn't read
23 e-mails that long either.

24 THE WITNESS: Okay.

25 THE COURT: So I understand completely.

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1 THE WITNESS: Thank you, Your Honor.

2 THE COURT: May I have a copy, please.

3 MS. KANYER: Of course.

4 BY MS. KANYER:

5 Q. Mr. Taha, I'm going to read from a page of your
6 deposition.

7 THE COURT: No, you're not.

8 MS. KANYER: Am I not doing it correctly?

9 THE COURT: I'm sorry?

10 MS. KANYER: I'm not doing it correctly then.

11 THE COURT: That's not allowed.

12 MS. KANYER: Okay. Do you mind if I have a
13 moment to confer with my co-counsel.

14 THE COURT: Yes, you have to establish that
15 there's some sort of inconsistent statement first
16 before you do that.

17 MS. KANYER: Okay.

18 THE COURT: Mr. Pincus would tell you the
19 same thing.

20 MS. KANYER: Thank you.

21 BY MS. KANYER:

22 Q. Mr. Taha, do you recall me asking you -- or,
23 Mr. Taha, I asked you in your deposition about
24 Ms. Yassin; that's correct?

25 A. I do not recall, but I'm not going to question it.

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1 Q. And so you don't recall testifying that Ms. Yassin
2 resided in --

3 THE COURT: In where?

4 MS. KANYER: The United Arab Emirates.

5 THE COURT: What was the precise question you
6 asked Mr. Taha in his deposition? Why don't you ask
7 that question again.

8 MS. KANYER: Your Honor, it's just an
9 inconsistent statement. I previously heard Mr. Taha
10 testify that she lived --

11 THE COURT: Yes, but let's have the question
12 from the deposition transcript. What was the question
13 to which you say Mr. Taha gave an inconsistent
14 response?

15 MS. KANYER: So the full question is -- I
16 apologize, it's not the best worded question -- "Okay.
17 So in December of 2007" --

18 THE COURT: It's where in the transcript?

19 MS. KANYER: Sorry. It is page 129 of the
20 transcript.

21 THE COURT: Just a moment.

22 MS. KANYER: Line 2.

23 THE WITNESS: Sorry? Which page again?

24 BY MS. KANYER:

25 Q. Page 129, line 2.

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1 THE COURT: Mr. Taha, why don't you just find
2 it. Let's not read anything or say anything; just tell
3 us when you found the question.

4 THE WITNESS: Your Honor, there are several
5 questions and answers.

6 THE COURT: This is a mini script. Do you
7 have page 129, Mr. Taha?

8 THE WITNESS: Yes, Your Honor.

9 THE COURT: All right. Good. Let's go from
10 there.

11 BY MS. KANYER:

12 Q. I'm looking at line 2, the question that starts
13 with "Okay."

14 THE COURT: Why don't you read the question.

15 BY MR. TAHA:

16 Q. "So in December of 2007, was mail going to you
17 instead of Mohamad? Was that how that worked? I guess
18 can you explain to me how their mail situation worked?

19 THE COURT: If you talk about a compound
20 question; that's it. Let's take it a step at a time.

21 BY MS. KANYER:

22 Q. Okay. And your answer said --

23 THE COURT: No. No answer. I haven't seen
24 anything that amounts to a question that you've asked
25 Mr. Taha today where he provided an inconsistent

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1 response.

2 MS. KANYER: Okay. I will move on then.

3 BY MS. KANYER:

4 Q. Mr. Taha, can I direct your attention to the
5 bottom portion of this document, the handwriting?

6 A. Page 129?

7 Q. Oh, excuse me. Page 80 in plaintiffs' exhibits.
8 Page 80 in plaintiffs' exhibits, GX2. It's the 1040-X
9 we were just looking at.

10 A. Okay. I'm here.

11 Q. That's your handwriting; correct?

12 A. That is correct.

13 Q. And that's your internal file name for this
14 document; is that correct?

15 A. That is what?

16 Q. Your file name for this document?

17 A. That is correct.

18 Q. And it's your testimony that this document, GX2,
19 page 80, PDF page 80, this is plaintiffs' filed 1040-X?

20 A. That's correct, it's 1040-X.

21 Q. Okay. But, Mr. Taha, you don't specifically
22 recall mailing the Form 1040-X for 2003; correct?

23 A. Correct.

24 Q. And you don't specifically recall how this 1040-X
25 was mailed; correct?

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1 A. Correct -- or it was mailed; correct.

2 Q. And, Mr. Taha, can I please have you turn to the
3 very beginning of plaintiffs' exhibits to PDF page 2,
4 "Plaintiffs' Exhibit List."

5 A. I'm sorry, what exhibit number?

6 Q. It's PDF page 2, so it's the very front of
7 plaintiffs' exhibits.

8 A. I don't know what PDF numbers mean to me.

9 Q. So in the upper right-hand corner looking at the
10 second page of this document entitled "Plaintiffs'
11 Exhibit List," so it's right before A.

12 A. I'm sorry, Counsel, I do not follow. Is that
13 Exhibit G?

14 Q. No, it is the page before Exhibit A. Do you see
15 "Plaintiffs' Exhibit List"?

16 A. Are you talking about "Plaintiffs' Memorandum of
17 Contentions Exhibit List"?

18 Q. Can you please turn to the next page in this set
19 of documents?

20 A. Okay.

21 Q. Does that say "Plaintiffs' Exhibit List"?

22 A. That's the exhibit I prepared, yes.

23 Q. Okay. And these are listing all of plaintiffs'
24 exhibits that you are using for this trial; correct?

25 A. That's correct. And these are the same documents

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1 that I already presented earlier.

2 Q. And in this you have not listed a certified mail
3 card in this exhibit list, correct, for tax year 2003;
4 correct?

5 A. I can answer with an explanation. The answer is
6 correct. And the explanation is, you are asking me
7 what happened 15 years ago, 13, 14 years ago. I do not
8 recall how it was mailed. But the fact remains,
9 Counsel, it was mailed simultaneously with 2002.

10 Q. We'll get to that in a second. Plaintiffs also
11 haven't listed a registered mailing card as well;
12 correct?

13 A. Correct. Are you still talking about certified
14 mail?

15 Q. I'm talking about registered mailing of the refund
16 claim for 2003.

17 A. That's the same thing as certified, isn't it?

18 Q. No, it is not.

19 A. It's not? Okay.

20 Q. Did you have any registered mailing receipts
21 listed in Plaintiffs' Exhibits List?

22 A. It would be the same answer as for the certified
23 mail.

24 Q. And regarding that 2002 federal refund claim, you
25 don't specifically recall mailing the 2002 federal

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1 income -- excuse me, 2002 refund claim; correct?

2 A. It was mailed along with 2003; that's correct.

3 Q. But you don't specifically recall mailing the 2002
4 refund claim; correct?

5 A. That's correct. It's because of the period that
6 passed. But the fact remains and the IRS acknowledged
7 receiving 2002 claim, so I do not understand -- my
8 apologies, I do not understand what you are leading to
9 except the fact that the IRS acknowledged 2002.

10 However it was mailed, I do not recall how it
11 was mailed. Most likely it was mailed by either
12 certified mail or regular mail or registered mail. I
13 have no recollection to that.

14 Q. And is it your -- you said it was mailed
15 potentially -- let me start my question over.

16 Was it mailed with one envelope or two
17 envelopes?

18 A. That I do not recall, but if I want to guess --
19 and I hate to guess, Your Honor -- it would have been
20 mailed in separate envelopes, but I cannot swear on
21 that.

22 Q. And, Mr. Taha, you also referenced a State of
23 California refund claim; correct?

24 A. That's correct.

25 Q. And that was for 2002 and 2003; correct?

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1 A. That's correct.

2 Q. And is it your testimony that those were filed at
3 the same time?

4 A. That's correct.

5 Q. Okay. And were those in separate envelopes?

6 A. No, they were filed together. When I say
7 "together," the State of California's income tax return
8 540 X was attached to the federal Form 1040-X for the
9 same year, both have to go together.

10 It's a must that the State would receive both
11 forms together, because for the following reason,
12 number one, it is standard or it is a requirement by
13 the State of California -- talking about the State of
14 California only -- that you attach the federal income
15 tax return along with the state income tax return.

16 For whatever reason, it's up to the State
17 whatever reason it is, maybe they want to verify what
18 the federal income tax return calls for, whatever
19 number it has, matches whatever is on the state income
20 tax return; that's my intuition.

21 Q. So I want to make sure I'm understanding. Are you
22 saying that these returns, the federal return and the
23 state return, were mailed only to the State of
24 California?

25 A. No, that's not what I said.

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1 Q. I wanted to make sure I understand you correctly.

2 A. What I said is, when I filed the State of
3 California income tax refund claim 540 X, it was
4 attached to the 1040 federal income tax return 1040-X.
5 Those two went to the State of California. That is
6 completely separate from what was mailed to the IRS.

7 Q. Okay. And thank you. Were those two State of
8 California returns, the 2002 return and the 2003 state
9 returns, refund claims, were they filed in one envelope
10 or two envelopes?

11 A. I apologize for not being specific, but most
12 likely they were filed separately because of the weight
13 of the document. Because at the time I knew what it
14 would cost to mail a standard weight envelope versus
15 overweight envelope. So I put stamps -- most likely I
16 put stamps on that envelope, which is a standard rate
17 stamp, and mailed them.

18 Q. And, Mr. Taha, did you also file your own refund
19 claims for 2002 and 2003 at the same time as these
20 refund claims were filed?

21 A. This is irrelevant, I'm sorry. It's irrelevant to
22 this case.

23 MS. KANYER: Your Honor, I would say this is
24 not irrelevant. We are going to how these returns were
25 filed based on what his actions were.

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1 THE COURT: Mr. Taha, it probably is relevant
2 insofar as how the returns were filed. It's not
3 irrelevant to the claim itself -- I mean it's not
4 relevant to the claim itself, I apologize for
5 misspeaking.

6 THE WITNESS: Okay. Your Honor, I did file
7 and I got refunded, similar to Mr. (Inaudible). No
8 questions asked, I was refunded my claim for tax
9 refund.

10 Because you asked me to -- you responded that
11 it is relevant, therefore, I have to respond that, yes,
12 I did file and I was refunded.

13 THE COURT: And you were what?

14 THE WITNESS: Refunded my income tax.

15 THE COURT: You were?

16 THE WITNESS: Yes, sir.

17 BY MS. KANYER:

18 Q. Mr. Taha, my question was very specifically did
19 you file your own refund claims for tax year 2002 and
20 2003 at the same time you filed these refund claims for
21 plaintiffs Taha for 2002 and 2003?

22 A. That I do not recall because they were separate.
23 I do not recall when I filed it.

24 Q. Okay. So we're looking at -- just so I'm clear,
25 we're looking at potentially four different envelopes,

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1 one for the federal for 2002 refund claim, one for the
2 federal 2003 refund claim, and then one for the State
3 of California for 2002 attaching a federal refund claim
4 for 2002 and a separate envelope with the 2003 State of
5 California refund claim attaching the Form 1040 for
6 2003.

7 THE COURT: Ms. Kanyer, this is a complicated
8 question. Are you asking about the 1040-Xs that
9 were -- and the state equivalent refund request that
10 were filed on behalf of the plaintiffs in this case, or
11 Mr. Taha himself?

12 MS. KANYER: I'm talking about the
13 plaintiffs, and I'm just asking the number of
14 envelopes.

15 THE COURT: Well, that assumes they were all
16 filed at the same time.

17 MS. KANYER: Correct.

18 THE COURT: Which might not be accurate.
19 We'll find out.

20 THE WITNESS: Let me respond to this answer,
21 Your Honor, and counsel.

22 Twelve years passed. I apologize for not
23 having that memory to remember how they were filed and
24 when they filed, but the fact remains they were filed.

25 BY MS. KANYER:

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1 Q. Mr. Taha, you don't remember how you addressed
2 these envelopes, do you?

3 A. I addressed them according to the instructions
4 that came up in the software, the software, which is
5 very famous software in the United States that a lot of
6 people use it, and it tells you where to file it.

7 As far as the very original filing for
8 taxpayers Mohamad Taha and Sanaa Yassin, it went back
9 to the same source or same destination where the
10 original 1040 was mailed to in Fresno, California. And
11 that's where the 1040-X went, Fresno center in
12 California. Fresno is the name of a city.

13 Q. So, Mr. Taha, were you the one who specifically
14 addressed the envelopes?

15 A. I myself addressed the envelope. No one else did,
16 no.

17 Q. You specifically recall doing that?

18 A. Of course, yes.

19 Q. Sitting here today, you specifically recall doing
20 that?

21 A. I addressed it, and I mailed it.

22 Q. So your testimony is now that you were the one who
23 mailed it?

24 A. In my testimony I gave, I still confirm that I
25 mailed it because of the inability of -- I mailed it,

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1 yes.

2 Q. So your testimony is now you specifically recall
3 mailing the refund claim for tax year 2003?

4 A. Specifically, I did answer that question. I
5 mailed them as required to the exact same address.

6 And to prove that statement, I repeat, the --
7 the IRS center in Fresno, California acknowledged
8 receiving 2002, but did not acknowledge 2003 for
9 whatever reason, I do not -- I'm not qualified to make
10 a reason why they did not acknowledge 2003.

11 Q. Mr. Taha, can I have you turn to Exhibit H, and in
12 Exhibit H looking at page 92.

13 A. Exhibit H. Document number?

14 Q. It's a letter dated January 21, 2008.

15 A. That's page 92 of 106?

16 Q. That's correct.

17 A. Thank you.

18 Q. You wrote this letter; correct?

19 A. Yes.

20 Q. But it's your testimony that that's Ms. Yassin's
21 signature; is that correct?

22 A. That's correct.

23 Q. And if I could have you turn to page 99, also in
24 Exhibit H.

25 A. 99 of 106, yes.

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1 Q. And you also wrote this document; right?

2 A. That's correct.

3 Q. And then turning to the next page, the
4 November 12, 2009, letter, you wrote that one as well?

5 A. That's correct.

6 Q. And if I could have you turn back to Plaintiffs'
7 Exhibit List, which is page 2, so the page right before
8 Exhibit A.

9 A. Exhibit H?

10 Q. Yes -- no, sorry, page 2, so it's the exhibit
11 before -- the page before Exhibit A, the very front of
12 the document.

13 Actually, just to make it easier, could I
14 actually have you turn, sorry, to Exhibit G, page 80,
15 it's the 1040-X for 2003?

16 A. Back to Exhibit G?

17 Q. Exhibit G, page 80.

18 A. Yes.

19 Q. Okay. And it's your testimony that this
20 document -- this is the filed document from November of
21 2007; is that your testimony?

22 A. That's correct.

23 Q. Okay. And so this came before -- it's your
24 testimony that this came before those letters that we
25 just looked at?

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1 A. That's correct. Not all -- not all the letters, I
2 believe. Was one letter 2015? And that's not
3 before -- I would say yes, this was filed before those
4 letters were sent to the IRS; that's correct.

5 Q. And this is the only 1040-X for 2003 that
6 plaintiffs included in their exhibits; correct?

7 A. That's correct, this is the only one.

8 Q. All right. Mr. Taha, I want to talk to you about
9 Atek Construction. Okay?

10 A. Correct.

11 Q. You testified that Atek Construction was an
12 S corporation; correct?

13 A. Correct.

14 Q. And it was formed in 1996; is that right?

15 A. It was formed in 1996; that's correct.

16 Q. And it was formed as an S corporation? It was
17 formed as an S corporation?

18 A. That's correct.

19 Q. And you left your 20 plus career as an engineer to
20 start Atek; is that right?

21 A. Before starting Atek? That's correct.

22 Q. So you're not a lawyer; correct?

23 A. I'm not what?

24 Q. Not a lawyer?

25 A. Not a where?

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1 Q. A lawyer?

2 A. No, I'm not a lawyer, I'm sorry. God forbid, I'm
3 not.

4 Q. You're not a lawyer?

5 A. I'm not a lawyer.

6 Q. And Atek was originally owned by you and your
7 nephew, Eyad Khalil; is that correct?

8 A. That is correct.

9 Q. And originally you and Mr. Khalil were equal
10 owners; correct?

11 A. Correct.

12 Q. And you would agree with me, right, that Atek was
13 formed as an S corporation because the shareholders
14 decided they wanted to pay taxes themselves and not the
15 corporation; correct?

16 A. Correct.

17 Q. And then in 2002, your percentage ownership
18 changed from 50 percent; correct?

19 A. Let me go back to the previous question, if you
20 don't mind.

21 Q. Go ahead.

22 A. Why the reason it was decided to form the
23 S corporation, to pass through the income to the
24 shareholders, that was not the reason because there is
25 a rule behind this formation of S corporation.

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1 In order to form the S corporation, you have
2 to abide by Rule 1362, Section 1362. And it happens
3 that Rule 1362 talks about passing through the income
4 to the shareholders.

5 I did not decide it. The Rule 1362 decided
6 it, because Rule 1362 says if you want to form an
7 S corporation, then that's what happens to the income,
8 it automatically goes to the shareholders to pay taxes
9 on the income. Do you follow what I mean? I don't
10 know if I'm explaining myself right or not.

11 Q. My question is, why did you and Mr. Khalil choose
12 to form Atek as an S corporation?

13 A. It's because Atek was -- first and foremost it was
14 a newly formed company, therefore, the "S" means small
15 corporation, so that's why we decided on selecting Atek
16 to be established as a small company. And then it came
17 about Rule Section 1362, that's what you need to do for
18 a small company to incorporate it as S corporation
19 because it was a small company.

20 Q. So in 2002 your percentage ownership changed from
21 50 percent; correct?

22 A. It was changed to what?

23 Q. Your ownership changed from 50 percent in 2002;
24 correct?

25 A. That's correct, it was changed.

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1 Q. You gave Plaintiff Taha 10 percent of your shares;
2 correct?

3 A. That's correct.

4 Q. He didn't give you any money in exchange for those
5 shares; correct?

6 A. I take that back. I did not -- sometimes I feel
7 confused with the terminology of whether of I gave or I
8 contributed. So I would like to emphasize that I
9 contributed 10 percent of my shares to Mohamad Taha as
10 my brother when he came to the United States as
11 immigrant.

12 So I did not -- so basically I'm trying to
13 correct the word "gave" versus "contributed." Because
14 this was an issue in the stipulation, Counsel, you
15 first stated in the stipulation that Mohamad Taha was
16 gifted 10 percent of Atek's shares, and this was
17 troublesome to me.

18 Because the fact is, Mohamad Taha was
19 contributed 10 percent of Ali Taha's shares. It was a
20 contribution so he can live on that earned money such
21 that he would not cause any financial burden on the
22 United States Government when he came to the United
23 States. It's a law. It's a sponsorship law that the
24 sponsor, and that was me in this case, to be
25 responsible for the immigrant financially and not cause

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1 any financial burden.

2 Because what that means, let's say
3 Mohamad Taha, of course he didn't have money, I didn't
4 help him, then he can go and request some kind of
5 financial help from the United States Government.
6 That's not going to be allowed because I'm responsible
7 for him at that time.

8 MS. KANYER: Your Honor, I would object.
9 This is going beyond the scope of my question of if it
10 was the 10 percent really given to --

11 THE COURT: That objection is overruled.

12 BY MS. KANYER:

13 Q. Mr. Taha didn't give you any money in exchange for
14 those shares; correct?

15 A. He did--

16 Q. Did Mohamad Taha give you any money in exchange
17 for those shares?

18 A. No.

19 Q. Was he required to perform any services in
20 exchange for those shares?

21 A. No, for the reason he was trying to get treatment
22 for his cancer illness and other reasons. That's
23 exactly what happened.

24 Q. And your brother, another brother, also received
25 5 percent of the shares of Atek; is that correct?

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1 A. No, he was contributed 5 percent of my shares, my
2 shares. That's what he was contributed, true.

3 Q. So he also had 5 percent of the shares in 2002;
4 correct?

5 A. Correct.

6 Q. So by the end of 2002, I want to make sure I have
7 my shareholders correct, Atek was owned by four
8 individuals; correct?

9 A. That's correct.

10 Q. Mr. Khalil owned 50 percent; correct?

11 A. That's correct.

12 Q. And you owned 35 percent; correct?

13 A. That's correct.

14 Q. And one of your other brothers owned 5 percent;
15 correct?

16 A. Correct.

17 Q. And Plaintiff Taha owned 10 percent; correct?

18 A. Correct.

19 Q. And this was a family-owned company; correct?

20 A. Correct.

21 Q. And Atek operated as a construction company;
22 correct?

23 A. Correct.

24 Q. And it worked on some public projects; correct?

25 A. Correct.

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- 1 Q. And you testified that you were the president and
2 secretary; right?
- 3 A. Correct.
- 4 Q. And your nephew, he was a vice president; correct?
- 5 A. Correct.
- 6 Q. And as part of the operations, Atek would review
7 bids; correct?
- 8 A. Correct.
- 9 Q. And Atek would generate an offer; correct?
- 10 A. Correct.
- 11 Q. And Atek would submit bids; correct?
- 12 A. Correct.
- 13 Q. And it would obtain bonds from surety companies
14 for the projects; correct?
- 15 A. Correct.
- 16 Q. And Atek would hire labor employees; correct?
- 17 A. They would hire?
- 18 Q. They would hire labor employees; correct?
- 19 A. That's correct.
- 20 Q. And it would also obtain subcontractors for
21 specialty work?
- 22 A. Correct.
- 23 Q. And it would purchase material and supplies?
- 24 A. Correct.
- 25 Q. And it would actually build the structure;

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- 1 correct?
- 2 A. Correct.
- 3 Q. Atek also had a line of credit; correct?
- 4 A. Correct.
- 5 Q. And Plaintiff Taha didn't guarantee that line of
- 6 credit; correct?
- 7 A. Who?
- 8 Q. Plaintiff Taha did not guarantee that line of
- 9 credit; correct?
- 10 A. He did not; that's correct.
- 11 Q. And Atek also had assets; correct?
- 12 A. Correct.
- 13 Q. It had automobiles?
- 14 A. Correct.
- 15 Q. Tools?
- 16 A. Correct.
- 17 Q. Equipment?
- 18 A. Correct.
- 19 Q. And money in bank accounts?
- 20 A. Correct.
- 21 Q. And you would agree with me that Atek actually
- 22 made money from its construction projects in 2002 and
- 23 2003; correct?
- 24 A. Correct.
- 25 Q. If I could have you turn to Plaintiffs'

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1 Exhibit 1A -- Plaintiffs' Exhibit A1, excuse me. This
2 is the 1120-S for 2002, it's PDF page 4.

3 A. What page?

4 Q. It's A1 is the exhibit, and it's page 4, so it's
5 the first page or the second page after the A tab.

6 A. Schedule K-1 for year 2002, there's no page on
7 it -- oh, page 1?

8 Q. In the upper right-hand corner, do you see page 4
9 of 106?

10 A. Could you refer me to the page number of 106,
11 which number is that?

12 Q. Page 4 of 106.

13 A. Page 4. I'm sorry, I'm a little slow. Yes.

14 Q. Okay. You assisted in preparing this return;
15 correct?

16 A. I assisted; that's correct.

17 Q. And you testified that that was your signature at
18 the bottom of the document?

19 A. That's correct.

20 Q. And so for 2002 Atek received ordinary income of
21 837,668, looking at line 21?

22 A. 839,682 (sic)? That's correct.

23 Q. If I could have you turn to Exhibit A2, which is
24 page 16.

25 A. Page 2?

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- 1 Q. Page 16 of 106, it is the 1120-S for 2003.
- 2 A. You said page 5 of 106?
- 3 Q. Page 16 of 106.
- 4 A. Oh, 16. I'm sorry, I apologize for not being able
- 5 to hear you clearly. 1120-S for 2003.
- 6 Q. Okay. You also assisted in preparing this 1120-S;
- 7 correct?
- 8 A. Correct.
- 9 Q. And that's your signature at the bottom of the
- 10 page?
- 11 A. That's correct, it is.
- 12 Q. And Atek reported that it received \$745,962?
- 13 A. That's correct.
- 14 Q. Atek would periodically make cash distributions to
- 15 its shareholders; correct?
- 16 A. Correct.
- 17 Q. But you would agree with me that Atek retained
- 18 some of its profits in order to keep it in operation;
- 19 correct?
- 20 A. That's correct.
- 21 Q. And so Atek would pay -- and you would agree with
- 22 me that Atek would pay its creditors before Atek paid
- 23 its shareholders; correct?
- 24 A. That's correct.
- 25 Q. So this means that the employees were paid before

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1 the shareholders?

2 A. The employees would --

3 Q. Were paid before the shareholders received a
4 distribution?

5 A. That's correct.

6 Q. And that's to stay with the subcontractors?

7 A. That's correct.

8 Q. And labor and material?

9 A. That's correct.

10 Q. And you would agree with me that Atek didn't
11 specifically set aside or earmark money in bank
12 accounts for the shareholders' pro rata shares; right?

13 A. Bank accounts?

14 Q. Would Atek set aside money in the bank accounts
15 for the shareholders' pro rata shares?

16 A. Not specifically, no. The bank accounts is a
17 comprehensive of all the money that Atek is depositing
18 regardless where that money goes.

19 What I'm saying, there's no specific number
20 that is assigned to Ali Taha or Mohamad Taha, or
21 Eyad Khalil, there's no such specific numbers in the
22 bank account.

23 Q. And what you just described, did that occur from
24 1996 to 2004?

25 A. Correct.

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1 Q. So in 2002 when plaintiff received the shares or
2 became a shareholder, he was living with you; correct?

3 A. That's correct.

4 Q. And did Plaintiff Taha and his family live with
5 you between 2002 and 2004?

6 A. They were what?

7 Q. Did Plaintiff Taha and his family live with you
8 between 2002 and 2004?

9 A. They did live with me, yes.

10 Q. So you observed his activities during that period;
11 correct?

12 A. Yes.

13 Q. Plaintiff Taha did not have a job in the United
14 States between 2002 and 2004; correct?

15 A. Correct.

16 Q. And I believe he previously worked in the United
17 Arab Emirates before coming to the United States;
18 correct?

19 A. Correct.

20 Q. But you don't recall specifically what he did in
21 the United Arab Emirates; correct?

22 A. I do not recall.

23 Q. And so Plaintiff Taha was unemployed between 2002
24 and 2004?

25 A. Who was?

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1 Q. Plaintiff Taha, Mohamad Taha, was unemployed
2 between 2002 and 2004?

3 A. That's correct.

4 Q. And you testified that Plaintiff Taha left the
5 United States -- excuse me, Plaintiff Taha left the
6 United States around 2004 for treatment in United Arab
7 Emirates; correct?

8 A. That's correct.

9 Q. Did he return to the United States after 2004?

10 A. He may have come back for a visit, but I do not
11 recall. But he occasionally, during the year, he would
12 come back with his family to live with me and stay for
13 certain periods of time and then go back.

14 But specifically he left in 2004 to get
15 medical treatment that was not available for him due to
16 financial situation wherein the United Arab Emirates he
17 would get free treatment.

18 Q. So Plaintiff Taha was not involved in the running
19 of Atek; correct?

20 A. That's correct.

21 Q. And he did not have any titles at Atek as far as
22 being a president or a vice president; correct?

23 A. That's correct.

24 Q. And he was not an employee of Atek; correct?

25 A. That's correct.

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1 Q. And he did not receive a salary from Atek;
2 correct?

3 A. Correct.

4 Q. And Plaintiff Taha was not responsible for any of
5 Atek's projects; correct?

6 A. Correct.

7 Q. So you would agree with me that Plaintiff Taha was
8 not responsible for reviewing any of the bids; correct?

9 A. That is correct. I did not review bids either.

10 Q. And so he was not responsible for generating any
11 offers; correct?

12 A. That's correct.

13 Q. And he never submitted any bids; correct?

14 A. That's correct.

15 Q. And he did not obtain any bondings from surety
16 companies; correct?

17 A. Correct.

18 Q. And he never hired any labor employees; correct?

19 A. Correct.

20 Q. And he never obtained any subcontractors for
21 specialty work; correct?

22 A. Correct.

23 Q. And you never purchased any material or supplies;
24 correct?

25 A. Correct.

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1 Q. And he never actually physically built those
2 structures; correct?

3 A. Correct.

4 Q. And Plaintiff Taha was not responsible for
5 preparing any of the Forms 1120-S; right?

6 A. Correct.

7 Q. And he was not responsible for reviewing any of
8 the financial statements; is that correct?

9 A. Correct.

10 Q. Plaintiff Taha had not provided any other loans
11 other than the purported loans we're talking about at
12 issue today; is that correct?

13 A. Mr. Taha did not provide any loan to anybody.

14 Q. And with respect --

15 A. The loan was owed by Atek to him. He did not
16 provide it.

17 Q. He did not contribute or did not exchange any
18 money in exchange for the note?

19 A. Correct, no.

20 Q. And with respect to Ms. Yassin, she worked as a
21 homemaker; correct?

22 A. Correct.

23 Q. And she did not earn any money herself; is that
24 correct?

25 A. Correct.

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1 Q. So just so I'm clear, the purported debt that
2 we're talking about today and the debt that you were
3 describing this morning, that's Plaintiff Taha's pro
4 rata share of Atek's income that was taxed but not
5 distributed; correct?

6 A. Correct.

7 Q. And to be clear, Atek owed this debt to Plaintiff
8 Taha; is that your testimony?

9 A. Correct.

10 Q. Okay. But it's not your testimony that Plaintiff
11 Taha made a loan?

12 A. He did not make a loan; correct.

13 Q. And it wasn't just Plaintiff Taha that was owed
14 this debt, it was also the other shareholders as well;
15 correct?

16 A. That's correct.

17 Q. And it was each shareholders' pro rata share that
18 they had not received; correct?

19 A. Correct.

20 Q. And so the debt that you're describing, it
21 occurred in 2004?

22 A. Correct.

23 Q. So before 2004, these debts, as you described
24 them, they were not considered debts?

25 A. Correct.

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1 Q. What were they considered?

2 A. My apologies, I was confused. They were still
3 considered debt. As long as the shareholders did not
4 receive their earned income and was kept by Atek, it is
5 owed by Atek to the shareholders, including Mr. Taha.
6 So it was a net -- I'm trying to differentiate because
7 I'm getting this confused, trying to compare anything
8 before 2002, that when Atek was dissolved, versus what
9 happened before.

10 Every year Atek owed money because Atek
11 maintained that income to keep it in operation, so
12 that's still a debt. And there are promissory notes
13 for every year where Atek promises to pay the
14 shareholders that money owed every year. And in this
15 case for Mohamad Taha, it's for year 2002 and 2003. So
16 I hope I clarified your question.

17 Q. Well, I'm actually trying to pin down the date
18 that this debt occurred. Is it your testimony that the
19 debt occurred after March 15th of the year that Atek
20 reported the income to the IRS?

21 A. The word "correct" I do not agree with, because
22 every year there is an occurrence of debt to Mr. Taha
23 and other shareholders, every year. But when it
24 occurred -- I would say why it occurred, it's because
25 of Atek's dissolution. So I'm a little bit confused

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1 trying to answer your question by saying occurred.

2 Every year there is an occurrence of debt.

3 Q. So it occurred -- is it your testimony that it
4 occurred when the bonding company takeovers that you
5 were describing happened, that's when the debt arose?

6 A. I would not call it that. I would call it lost
7 once the bonding companies took over.

8 Q. So when did it arise?

9 A. As soon as the bonding companies filed these
10 letters with the project owners demanding no more
11 receivables should be paid to Atek. That exactly --
12 when it happened, on October 13th for Hartford. And
13 probably two days after the letter came from developers
14 to withhold the receivables from paying Atek. That's
15 exactly when that debt became business bad debt.

16 Q. So my question is, when did it arise?

17 A. When did it what?

18 Q. When was the debt established?

19 A. It was established when Atek was dissolved and
20 there was no more assets in Atek.

21 Q. So what was it considered before Atek was
22 dissolved, as you're describing it?

23 A. Atek was healthy, it had the money, the money was
24 not lost, the money is still being owed, some of the
25 money was still being owed by Atek to the shareholders,

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1 and, therefore, they were not bad debt.

2 There's a difference between debt and bad
3 debt. In 2004, the debt became bad debt, which means
4 Atek cannot pay. And according to the IRS rules, it's
5 a bad debt, it happened in year 2004 for filing the
6 income tax refund.

7 Q. So I think I understand your testimony as to when
8 it became bad debt, but you also said that it was debt
9 before it became bad debt; correct?

10 A. No, I did not say that.

11 Q. Okay. So it did not --

12 A. I said the only debt that became bad debt is when
13 Atek was dissolved in 2004. So if there was money for
14 prior years that Atek owed, it became bad debt along
15 with any money owed for 2004, inclusive of the previous
16 year, that occurred in October of 2004, that's when it
17 became bad debt.

18 Q. So it was considered -- the undistributed
19 shareholder income, what was that considered before the
20 bonding takeover occurred?

21 A. It was a loan or whatever -- it's a loan, which
22 means money maintained by Atek to keep it in operation,
23 so it was a loan.

24 Q. And you testified that Atek created promissory
25 notes; correct?

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1 A. That's correct.

2 Q. If I could have you turn to Plaintiffs' Exhibit C,
3 and we're looking at Exhibit C1 and C2, which are at
4 PDF 58 and 59.

5 A. Exhibit C?

6 Q. Exhibit C; correct.

7 A. 58 of 106?

8 Q. 58 of 106 and 59 of 106.

9 A. Okay. Thank you.

10 Q. These are the promissory notes you're referring
11 to; correct?

12 A. That's correct.

13 Q. And you're familiar with these promissory notes;
14 correct?

15 A. I wrote them, yes.

16 Q. You said you wrote them?

17 A. Yes.

18 Q. You wrote both the promissory note for 2002 and
19 the promissory note for 2003?

20 A. Yes.

21 Q. And you didn't have any lawyers assist you in
22 drafting these promissory notes?

23 A. I did not because I didn't need to.

24 Q. And you signed these promissory notes for 2002 and
25 2003; correct?

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1 A. That's correct.

2 Q. And Plaintiff Taha, he didn't have any role in
3 drafting these promissory notes; correct?

4 A. Correct.

5 Q. So you would agree with me that Plaintiff Taha did
6 not negotiate any of the terms of this promissory note
7 for 2002 or 2003; correct?

8 A. That's correct.

9 Q. So then you would agree with me that Plaintiff
10 Taha did not negotiate the amount of interest provision
11 on these notes; correct?

12 A. That's correct.

13 Q. And he didn't negotiate any time specificities for
14 repayment; correct?

15 A. I'm sorry?

16 Q. Any specific time for repayment; correct?

17 A. The specific time is an appropriate time whenever
18 Atek had the working capital, so that is correct.

19 Q. So just to be clear, Plaintiff Taha did not
20 negotiate the appropriate request date of --

21 A. That's correct.

22 Q. Thank you. Okay. If we could just look at the
23 promissory note for 2002, so Exhibit C1, page 58 of
24 106, this promissory note is dated December 31, 2003;
25 correct?

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- 1 A. That's correct.
- 2 Q. And this is the date you signed the promissory
- 3 note?
- 4 A. Huh?
- 5 Q. This is the date you signed this promissory note?
- 6 A. That's correct.
- 7 Q. So is it your testimony that as of
- 8 December 31, 2003, Mohamad Taha -- excuse me, Atek
- 9 agreed to pay Mohamad Taha \$84,935?
- 10 A. That's correct.
- 11 Q. I believe you testified previously that Atek had
- 12 distributed 20,000 to Plaintiff Taha for tax year 2002;
- 13 correct?
- 14 A. Correct.
- 15 Q. And those payments were to cover taxes; correct?
- 16 A. Correct.
- 17 Q. If I could have you turn to Plaintiffs'
- 18 Exhibit H2, and we're looking at PDF page 98 of 106.
- 19 A. 98 of 106? Thank you.
- 20 Q. Do you recognize this document?
- 21 A. Yes.
- 22 Q. What is this document?
- 23 A. These are some checks for the money that
- 24 Mohamad Taha received from Atek.
- 25 Q. And these checks were dated -- the first check was

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1 dated March 31, 2003; correct?

2 A. That's correct, March 31, 2003. Thank you.

3 Q. And it was noted that it was for a profit

4 distribution; is that correct?

5 A. Correct.

6 Q. And then the second check was issued on

7 March 4, 2003; correct?

8 A. That's correct.

9 Q. And it was for a 2002 profit draw; is that

10 correct?

11 A. Correct.

12 Q. And then the third check was October 16, 2003;

13 correct?

14 A. Correct.

15 Q. And that was for a profit distribution; correct?

16 A. Correct.

17 Q. And so these are the \$20,000 that we were

18 previously discussing; correct?

19 A. Correct.

20 Q. And so as of October 16, 2003, Plaintiff Taha had

21 received \$20,000; correct?

22 A. That's correct.

23 Q. If I could have you return to Exhibit C1, page 58

24 of 106.

25 A. Yes.

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1 Q. You just previously testified that as of
2 December 31, 2003, Atek had agreed to pay \$84,935;
3 correct?

4 A. I'm sorry, I must be on the wrong page. I thought
5 you said 63 of 106.

6 Q. 58 of 106. 58. Sorry about that.

7 A. Back to the promissory note, yes.

8 Q. Correct. Looking at that \$84,935; do you see
9 that?

10 A. Yes.

11 Q. As of December 31, 2003, hadn't \$20,000 already
12 been distributed to Plaintiff Taha?

13 A. That's correct.

14 Q. So this promissory note as to Mr. Taha is not
15 correct -- promissory amount as to Mr. Taha is not
16 correct?

17 A. It should have been reduced by \$20,000, and
18 there's records of it. So this promissory note was not
19 revised. I did not revise it. It was my
20 responsibility, but I know that Mohamad Taha was owed
21 \$20,000 less from 84,935.

22 Q. And was that \$20,000 considered a loan repayment?

23 A. It's considered payment of the loan, yes.

24 Q. But as of December 31, 2003, is it your testimony
25 that it wasn't a bad debt at that time?

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1 A. I didn't say that.

2 Q. What is your testimony?

3 A. I said this 84,000 is a bad debt.

4 Q. As of December 31, 2003?

5 A. But before it became bad debt, he was paid
6 \$20,000.

7 Q. And is it your testimony that that was a loan --
8 was that a loan payment or a distribution?

9 A. What's the difference?

10 Q. Is it your testimony that that was a loan payment?

11 A. This 84,000 for 2002 was documented as a loan.
12 Okay? This promissory note is a loan for \$84,000. So
13 when he was paid \$20,000, this loan was not revised.
14 So this loan became bad debt in October, 2004 when Atek
15 was dissolved by the bonding companies.

16 Q. Mr. Taha, can I have you please turn just two
17 pages over to page 60 of 106.

18 A. Yes.

19 Q. Do you recognize this document?

20 A. Yes.

21 Q. And this is detailing Plaintiff Taha's '02 -- or
22 this includes Plaintiff Taha's '02 profit distributions
23 in the amount of \$20,000?

24 A. Yes.

25 Q. And it was called an '02 profit distribution for

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1 each of those payments?

2 A. Correct.

3 Q. It was not listed as a loan repayment; correct?

4 I'm sorry, I didn't hear an answer.

5 A. The \$20,000 paid was paid from the loan that Atek
6 owed him before the bonding companies took over Atek
7 and seized its operation, so it was a loan when the
8 \$20,000 paid.

9 After the bonding companies filed their suit
10 and letters, that loan became bad debt, no longer -- it
11 was still a loan on record, but it became a bad debt.
12 I don't know how else I can explain it or if I actually
13 understand your question.

14 Q. Let me ask my question again.

15 A. Thank you.

16 Q. So you agree with me that the \$20,000 payments --
17 so we're looking at page 60 of 106, the Atek
18 Construction transaction by accounts, we're looking at
19 those three payments; do you see them?

20 A. Yes.

21 Q. Okay. And it's -- you would agree with me that
22 it's an '02 profit distribution for each one of those
23 three payments; correct?

24 A. What this means, they are distribution from what
25 he earned for 2002. It's not a -- okay. Okay. Let me

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1 make it simple. If you look at the third line item, he
2 was distributed \$84,000.

3 Q. And that's retained earnings; correct?

4 A. That's correct.

5 Q. And that retained earnings doesn't mean
6 retained --

7 A. The \$84,000 now was reduced, but he was
8 distributed what he was given in total of \$20,000. So
9 at that time, that \$84,000, if you take the \$20,000,
10 then the net money left for 2002 profit distribution
11 became \$64,000.

12 Q. Thank you.

13 A. Accounting is complicated sometimes, but that's
14 how it is.

15 Q. Can I have you return to the promissory note for
16 2002, so page 58 of 106.

17 A. 58 of 106, yes.

18 Q. You're there? Okay. The term "loaned profit
19 distribution," that means each shareholders' pro rata
20 share of Atek income that had not been distributed;
21 correct?

22 A. That's correct.

23 Q. In looking at an appropriate request date, that
24 term means when Atek would be financially capable of
25 making the payment; correct?

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1 A. That's correct.

2 Q. And Atek would retain that money in order to help
3 it keep making bids; correct?

4 A. Correct.

5 Q. So Atek would not make distributions to
6 shareholders if credits were -- if creditors were
7 outstanding; correct?

8 A. Creditors come first; correct.

9 Q. And so what that means is, that if Atek would miss
10 a payment to one of its creditors, then it wouldn't
11 make a payment to the shareholder; right?

12 A. No, Atek would prioritize payments to the
13 creditors.

14 Q. And so that meant that employees would always come
15 first; correct?

16 A. Correct.

17 Q. And subcontractors would always come first?

18 A. Yes.

19 Q. And payments to materials and suppliers, that
20 would also come first?

21 A. Correct.

22 Q. If I could direct your attention to the interest
23 rate of 10 percent provision. So this promissory note
24 doesn't include a date that interest payments are to
25 begin -- begin to be calculated; correct?

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1 A. Begin when?

2 Q. Begin to be calculated.

3 A. The interest was not calculated because there's no
4 money to calculate interest for. There was no money.
5 So calculating interest is -- would not have any
6 meaning because there is no money to calculate the
7 interest on. That is gone, that is debt, became
8 worthless.

9 So there was no sense in calculating what the
10 interest rate or what the interest amount is because
11 there is no money to calculate interest on.

12 Q. So what about between December 31, 2003, and
13 October when you described the takeover, there was no
14 interest calculated during that period?

15 A. That's correct, no interest calculated, because
16 the money was still in place in the bank.

17 Q. So interest is only getting calculated if a
18 payment is going to be made?

19 A. That is correct. Let's say as an example, this
20 \$84,935 was ready to be paid to Mohamad Taha right
21 then, then the interest would have been calculated.

22 Q. But no interest was calculated?

23 A. That's correct.

24 Q. For 2002 --

25 A. Because the money was not made to him or any other

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1 shareholder. You cannot -- let me put it like this,
2 you cannot calculate an interest on money that you are
3 not getting.

4 Q. You would agree with me, right, that Mohamad Taha
5 did not require Atek to pledge any of its assets in
6 exchange for the notes; correct?

7 A. Did not require what?

8 Q. Did Atek ever pledge any of its assets that we
9 previously discussed, like bank accounts, cars, or
10 equipment, to secure any of these notes?

11 A. No, the only thing that Atek pledged is this
12 amount on the promissory note.

13 Q. Can I please have you turn the page to Exhibit C2,
14 which is at PDF 59 of 106? So you're looking at a
15 promissory note for 2003?

16 A. Yes.

17 Q. You would agree with me that the language in the
18 promissory note for 2003 uses the same type of language
19 for the promissory note in 2002?

20 A. Yes.

21 Q. And so this means that the loan profit
22 distribution language in the 2003 note has the same
23 meaning; correct?

24 A. Yes.

25 Q. And that means it's each shareholders' pro rata

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1 share of Atek's income that had not been distributed;

2 correct?

3 A. Correct.

4 Q. And as related to Plaintiff Taha, that was that

5 77,708?

6 A. Yes.

7 Q. And, again, Plaintiff Taha didn't give Atek any

8 money in exchange for this note; correct?

9 A. For this year, he did not.

10 Q. And the purpose of this note was so that Atek

11 would be able to continue bidding on its projects;

12 correct?

13 A. Yes, correct.

14 Q. And the at appropriate request date has the same

15 meaning as the 2002 promissory note?

16 A. Yes.

17 Q. And that means at a time that Atek would be

18 financially capable of making the payment; is that

19 correct?

20 A. Correct.

21 Q. And so it had the same meaning, that creditors

22 always come first?

23 A. Yes.

24 Q. And as far as this 10 percent listed in the 2003

25 promissory note, that was never calculated as well;

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1 correct?

2 A. That's correct.

3 Q. And it was never paid; correct, just to be clear?

4 A. Correct.

5 Q. And interest would only get calculated if money
6 became available to distribute to the shareholders?

7 A. That's correct.

8 Q. And, likewise, Atek didn't pledge any of its
9 assets that we previously discussed, like bank
10 accounts, or the cars, or the equipment, to secure any
11 of these notes; correct?

12 A. Correct.

13 Q. And so looking at this promissory note for 2003,
14 it's signed March 15, 2004; correct?

15 A. That's correct.

16 Q. And as of March 15, 2004, Atek would not have been
17 able to obtain a loan for this amount or the amount for
18 the 2002 year; correct?

19 A. That's not correct.

20 Q. Can you please explain what's incorrect?

21 A. There was money available in different accounts.
22 The major one was receivables that Atek was supposed to
23 have been paid for, and there was money in returned
24 earnings. But Atek at that date decided it did not
25 want to spend the money that is in returned earnings

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1 because that money in returned earnings was already
2 spent.

3 So, therefore, by March, by middle of 2004,
4 October, 2004, Atek exhausted all the money it had,
5 including the money Atek owed to the shareholders.
6 That money became bad debt.

7 Q. Did Atek ever try to get a loan to pay the amounts
8 listed on these promissory notes for 2002 or 2003?

9 A. The answer is yes in one way and no in another.
10 The first, Atek requested assistance from the bonding
11 companies, which is a standard request to ask the
12 bonding companies to help the contractor financially.
13 That did not happen.

14 The other one is, Atek had enough receivables
15 and they had line of credit with a bank that extended
16 or exhausted, and, therefore, there was no interest in
17 seeking other financial or credits from other sources.

18 Q. So I'm not sure I understand your answer. Is your
19 answer that Atek did try to get a loan to pay these
20 amounts for 2002 and 2003?

21 A. Atek has a line of credit, and that line of credit
22 was spent.

23 Q. As of when?

24 A. 2004.

25 Q. So not as of --

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1 A. As of October, 2004, it was spent. It was not
2 spent in total; it was spent gradually. Whenever the
3 money needed to pay for creditors or material
4 suppliers, Atek would use that money periodically, not
5 as a total, per se. So that's how Atek spent that line
6 of credit.

7 Now, as far as going back to your question,
8 Atek did not feel requesting any further credits
9 because of what Atek had in receivables that Atek was
10 expecting to be received or to be paid by the project
11 owners. So the answer is no, it did not seek another
12 financial assistance or credit from anywhere.

13 That's probably as brief as I should have
14 answered your question, but I wanted you to understand
15 the background behind asking or requesting financial
16 assistance from other creditors.

17 Q. So is it your testimony that Atek would have been
18 able to get a loan for either the amounts on the
19 promissory note for 2002 or 2003?

20 A. Atek was not able to pay them or -- I don't know
21 if I understood your question. Was Atek able to pay
22 them?

23 Q. Let me try to break it up. Is your testimony that
24 Atek would have been able to get a loan for the total
25 amount of the promissory note for 2002 as of

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1 December 31, 2003?

2 A. Atek did not seek that.

3 Q. Was Atek able to get a loan as of
4 December 31, 2003, for close to \$65,000?

5 A. This is a hypothetical question. All I can tell
6 you, Atek did not seek for financial help from any
7 source to pay these loans. It did not. Again, Atek
8 had enough receivables, I said that in my opening
9 statement, multimillion dollars, and there's proof to
10 show it, accurate as on the 1120-S that we reviewed
11 already.

12 There was plenty of money, but that money was
13 being delayed by the project owners. So every month we
14 would -- Atek would seek that money to come in, and it
15 would not come in. So it was exhausting its reserve.

16 Q. Mr. Taha, you testified that Atek previously had
17 other notes before 2002; correct?

18 A. Yes.

19 Q. Plaintiffs haven't produced any other promissory
20 notes beyond the ones for 2002 and 2003 in this
21 litigation; correct?

22 A. That's correct, there was no other promissory
23 notes.

24 Q. So your testimony is there were no other
25 promissory notes other than the two at issue in this

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1 case?

2 A. Other than these two; correct.

3 MS. KANYER: Your Honor, would it be an okay
4 time to take a break?

5 THE COURT: We can. In fact, I was thinking
6 about that myself. I think we can take a 20-minute
7 break. Should we do that?

8 MS. KANYER: That would be great.

9 THE COURT: We're in recess for 20 minutes.
10 (A break was taken.)

11 THE COURT: Ms. Kanyer, where do we go from
12 here?

13 MS. KANYER: Your Honor, we still have some
14 questions for Mr. Taha.

15 THE COURT: Mr. Taha, if you'll please return
16 to the witness stand, that would be helpful.

17 BY MS. KANYER:

18 Q. Mr. Taha, can I please have you return to
19 Plaintiffs' Exhibit 1A, which is PDF 4 of 106. It is
20 the 1120-S for 2002.

21 A. 1120-S for 2002?

22 Q. Yes. If I could have you turn to PDF page 7, the
23 "Balance Sheets Per Books." And this is an 1120-S for
24 2002; correct?

25 A. Correct. Page 7 of 106, I'm here.

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1 Q. Okay. Looking at "Liabilities and Shareholders'
2 Equity under Schedule A, Balance Sheets Per Books," do
3 you see where it says "Loans from shareholders"?

4 A. Yes.

5 Q. And at the beginning of the year, it's showing
6 592,823 outstanding loans from shareholders; correct?

7 A. That's correct.

8 Q. And then at the end of the year it's showing
9 \$58,524 of loans outstanding; correct?

10 A. Correct.

11 Q. Can I please have you turn to Plaintiffs'
12 Exhibit A2, which is on PDF page 16 of 106. This is
13 the 1120-S for 2003; correct?

14 A. Correct.

15 Q. If I could have you turn to PDF page 19 of 106.

16 A. Yes.

17 Q. Once again, we're looking at the "Balance Sheet
18 Per Books, Schedule L." Do you see that?

19 A. Yes.

20 Q. And then looking at "Liabilities and shareholders'
21 equity," do you see 19 loans from shareholders?

22 A. Yes.

23 Q. And then do you see at the beginning of the year
24 it's showing \$58,524; do you see that?

25 A. That's correct.

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- 1 Q. And then at the end of the year, it's not showing
2 any amounts --
3 A. Correct.
4 Q. -- outstanding as loans from shareholders?
5 A. Any what?
6 Q. Any amounts outstanding as loans from
7 shareholders; correct?
8 A. It's under line 24.
9 Q. My question is a little bit more simple. You
10 don't see any amounts listed as loans from shareholders
11 at the end of the year?
12 A. No, there isn't.
13 Q. What?
14 A. No, there is not, no amount for 2004.
15 Q. If I could have you turn to Plaintiffs'
16 Exhibit A3, which is at PDF 28.
17 A. Page 83?
18 Q. Page 28.
19 A. 28, sorry.
20 Q. Sorry, it is Plaintiffs' Exhibit A3. So we're
21 looking at the 1120-S for 2004, the amended 1120-S.
22 A. Yes.
23 Q. You amended this to add a shareholder; correct, or
24 to add shareholders?
25 A. Correct.

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1 Q. You didn't make any other changes?

2 A. No.

3 Q. You retired in 2004; correct, from Atek?

4 A. Yes.

5 Q. When in 2004 did you retire?

6 A. What?

7 Q. When in 2004 did you retire?

8 A. I do not recall the exact day, but I would say
9 around the time when Atek was taken over by the bonding
10 companies.

11 Q. And so you didn't prepare the original 1120-S for
12 2004; right? So you're looking at the amended 1120-S
13 for 2004.

14 A. Yes.

15 Q. You did not prepare the original 1120-S for 2004;
16 correct?

17 A. That's correct.

18 Q. If I could have you turn to PDF page 31 of 106.
19 Do you see "Schedule L, Balance Sheets Per Books?

20 A. Yes.

21 Q. And do you see line 19, "Loans From Shareholders"?

22 A. Yes.

23 Q. And do you see that it does not list any amounts
24 for the beginning of the year or the end of the year;
25 correct?

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1 A. Correct.

2 Q. If I could have you turn back to the beginning of
3 the 1120-S, page 28 of 106.

4 A. Page 28 of 106, yes.

5 Q. So it's your testimony that the debt became bad as
6 of 2004; correct?

7 A. Correct.

8 Q. And so why didn't Atek report any cancellation of
9 indebtedness income?

10 A. Did not report any income?

11 Q. Did not report any income from cancellation of
12 indebtedness?

13 A. There is no income for 2004.

14 Q. There's no income from cancellation of
15 indebtedness income from the shareholders?

16 A. 2004 incurred a loss, so there was no income to be
17 distributed. It was a loss. As you can see, there's a
18 loss of \$3,873,000.

19 Q. So you did not amend the 2004 1120-S to report any
20 cancellation of indebtedness income on account of this
21 bad business debt; correct?

22 A. Not on the other 1120-S 2004, this is the only
23 amended 2004 1120-S.

24 Q. And no cancellation of indebtedness income was
25 reported on account of this bad business debt; correct,

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1 by Atek?

2 A. That's what I was trying to explain to you because
3 sometimes the question does not have a clear answer yes
4 or no. So I'm trying to clarify whatever loans Atek
5 owed, it is under retained earnings; that's where it
6 is. At that time I did not go back and break it up
7 between the shareholders. There's a million \$871,000
8 end of 2003, and it shows here at the beginning of
9 2004, a million 871, that's page 31 of 106. That's
10 where all the shareholders' money is sitting, right
11 under retained earnings.

12 Retained earnings means it's a sub-account
13 under the major account of stockholders or
14 shareholders' equity. This money was not
15 distributed -- it is there, we know what it is for
16 every shareholder, but it was not showing as loans on
17 the line Number 19 as a loan. It's still sitting here.
18 We didn't have the chance, I guess, at the time to
19 break it up.

20 Q. As an equity account; is that what you're saying?

21 A. Huh?

22 Q. As an equity account; is that what you're saying?

23 A. This retained earning is a sub-account of
24 shareholders' equity account.

25 Q. Okay. So you testified there was a takeover in

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1 2002 by the bonding companies; right?

2 A. Yes.

3 Q. And you testified that the bonding companies came
4 in and took over everything; correct?

5 A. Correct.

6 Q. And that included documents; correct?

7 A. Correct.

8 Q. And they actually completed the projects for Atek;
9 correct?

10 A. That I do not know.

11 Q. You do not know. Did you testify that they came
12 in and they paid the creditors of Atek?

13 A. I do not recall that statement. All I know is,
14 the bonding companies was liable based on the
15 contractual clauses that they would be liable to pay
16 all creditors and employees of Atek if Atek defaults or
17 Atek, in this case, was dissolved. I did not -- I do
18 not recall saying the bonding companies paid this and
19 paid that, I do not -- I do not recall that.

20 Q. Okay. But they were, under some contract,
21 required to pay the creditors?

22 A. Right, because -- that's correct. Because this is
23 a liability of the bonding company. That's why they
24 are bonding the projects.

25 Q. And did the bonding companies pay any of the

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1 shareholders on the promissory notes?

2 A. Not a penny.

3 Q. Okay. And you previously walked us through the
4 letters, the demand letters from the bonding companies.
5 Do you recall that?

6 A. Yes.

7 Q. Plaintiffs were not aware of any of these demand
8 letters; correct?

9 A. Any what?

10 Q. Plaintiffs were not aware of any of these letters;
11 is that correct?

12 A. That's correct.

13 Q. And that's the same with the complaints, the
14 plaintiffs weren't aware of those summonses and those
15 complaints; correct?

16 A. That's correct.

17 Q. And that's the same with the judgments, plaintiffs
18 weren't aware of the judgments; correct?

19 A. That's correct.

20 Q. If I could have you turn to Defendant's
21 Exhibit 26, so it's in the defendant's binder.

22 A. 26 of 106?

23 Q. This is a document that has been Bates labeled,
24 it's premarked Defendant's Exhibit 26. It's hard to
25 see, but it's Bates labeled HAR0001 to 000 --

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1 A. I'm sorry, I lost you. Page number?

2 Q. So I'm looking at Defendant's Exhibit 26.

3 A. Exhibit 26?

4 Q. So do you have Defendant's exhibits open, the
5 bigger of the two binders?

6 A. Oh, I'm sorry.

7 Q. If you could look at Tab 26.

8 A. "Final Judgment"?

9 Q. Yes, that's correct.

10 A. Yes.

11 Q. Do you recognize this document? You can flip
12 through.

13 A. Yes, I do.

14 Q. You recognize it?

15 A. Yes.

16 MS. KANYER: Your Honor, we would offer
17 Exhibit 26 as the completed final judgment from
18 plaintiffs for cause of action for breach of indemnity
19 agreement.

20 THE COURT: Admitted.

21 (Defendant's Exhibit Number 26 was admitted
22 into evidence.)

23 BY MS. KANYER:

24 Q. And regarding this promissory note, Plaintiff Taha
25 didn't file any legal action trying to get paid, any

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1 legal action against Atek; correct?

2 A. Correct.

3 Q. Can I have you please turn to Plaintiffs'

4 Exhibit H2, which is PDF page 94?

5 A. Page 94 of 106?

6 Q. That's correct.

7 A. Thank you.

8 Q. And this is the proof of claim that plaintiffs

9 filed in Mr. Khalil's bankruptcy proceeding?

10 A. Correct.

11 Q. And just to be clear, it says the dates were

12 incurred March 15th -- excuse me, the date the debt was

13 incurred was March 15, 2002, and March 15, 2003?

14 A. The total claim is comprising 2002 and 2003

15 claims.

16 Q. So I'm looking at line 2, so in the middle of the

17 document, do you see where it says, "Date the debt was

18 incurred"?

19 A. Yes.

20 Q. And it says, "March 15, 2002," and

21 "March 15, 2003"?

22 A. Yes.

23 Q. So those dates are not correct; right? Those are

24 not the correct dates the debt was incurred?

25 A. Well, the understanding here, those are the

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1 dates -- if you notice, it's the filing date of 3/15/02
2 and 3/15/03, so this debt pertains to those years.

3 Q. It pertains to --

4 A. It does not imply or indicate that when the debt
5 was incurred. Just like I said, it translated \$142,000
6 debt for both years 2002 and 2003; that's what it is.

7 Q. So this is not intending to say the debt was
8 incurred on March 15, 2002, and March 15, 2003?

9 A. It depends on how I'm trying to understand your
10 question. If you're talking about the bad debt, these
11 are not the dates when the bad debt occurred.

12 Q. So are these the dates --

13 A. If you look, again, as I explained it, that's
14 how -- how it is. These dates are the years for the
15 debt that Atek owed to the shareholder.

16 Q. Well, that's actually what I'm trying to drive at.

17 A. I do not understand either.

18 Q. So March 15, 2002, wouldn't that relate to tax
19 year 2001?

20 A. These are the years they were filed and they
21 are -- as I explained, these are the years that
22 Mohamad Taha earned his ordinary income of \$142,000.

23 Q. So Mohamad Taha earned ordinary income on
24 March 15, 2002?

25 A. Correct.

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1 Q. Wasn't the tax return filed, the 1120-S for 2002
2 filed March 15, 2003?

3 A. No, that's when he filed his own 1040 income tax
4 return for 2002 and 2003. He filed both years on these
5 dates.

6 Q. Can you say that again?

7 A. Mohamad Taha filed his income tax return for
8 2002 -- I take it back.

9 I cannot recall how these dates came about,
10 but if you look at the attached page, it explains
11 exactly how that \$142,000 came in place. It itemizes
12 the first line, 2002; share of income, 84,000; year
13 2003, 77,000. He got paid 12,000, 3,000, and \$5,000,
14 and the balance was \$142,000 that Atek owed
15 Mohamad Taha.

16 Q. So you don't have an understanding of why --

17 A. So I recall -- first, I don't understand your
18 question. Number two, I do not recall how these dates
19 were incurred.

20 Q. And looking at the name --

21 A. It's been 16, 17 years old, I'm sorry, I cannot
22 recall that. But it was signed -- as you can see at
23 the bottom, it was signed on January 3, 2006.

24 Q. And that's --

25 A. It was signed by an attorney.

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- 1 Q. It was signed by an attorney?
- 2 A. Right.
- 3 Q. It was not signed by Mohamad Taha?
- 4 A. Correct, because the attorney submitted it to the
- 5 bankruptcy court.
- 6 Q. Okay. In looking at the name and address of where
- 7 this should be sent, it says it should be sent to
- 8 Mohamad M. Taha; is that correct?
- 9 A. Yes.
- 10 Q. How do you spell Mohamad's name? Is it with one
- 11 "M" or two "Ms"?
- 12 A. M-O-H-M-A-D.
- 13 Q. Okay.
- 14 A. M-O-H-A-M-A-D.
- 15 Q. I want to go back to Plaintiffs' Exhibit A3,
- 16 that's the 1120-S for 2004, so it should be PDF 28.
- 17 A. 1120-S for 2004?
- 18 Q. Yes, the amended 1120-S for 2004. Are you there?
- 19 A. Okay.
- 20 Q. And is it your testimony that this document is the
- 21 filed amended 1120-S for 2004?
- 22 A. Correct.
- 23 Q. Okay. And that's your signature at the bottom;
- 24 correct?
- 25 A. Correct.

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1 Q. And it was signed 11/15/2012?

2 A. Correct.

3 Q. And it's your testimony that it was filed
4 11/15/2012?

5 A. Correct.

6 Q. If I can have you turn to Defendant's Exhibit 12,
7 so it's in the other binder. Are you at Defendant's
8 Exhibit 12?

9 A. 1120-S, yes.

10 Q. Do you recognize this document?

11 A. Yes.

12 Q. In looking at the bottom, is that your signature?

13 A. Yes.

14 Q. And what is that date of that signature?

15 A. That signature is 11/15/13.

16 Q. So is it still your testimony that the previous
17 document was filed on 11/15/2012?

18 A. It's the same month and the same day, but for some
19 reason I had to maybe sign it twice. I may have wrote
20 the year wrong, I cannot recall. But I have another --
21 along with this 1120-S that I sent to the IRS, I sent a
22 letter along with this and I explained why I was
23 amending this return.

24 Q. So is your testimony --

25 A. And this is not --

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1 Q. -- still that the 1120-S for 2004, which is
2 Plaintiffs' Exhibit A3 at PDF page 28 of 26, is the
3 filed 1120-S for 2004?

4 A. All I can say, I do not know -- I don't know -- I
5 don't have a record of your Exhibit 12. I have a
6 record of my Exhibit A. So, again, the year looks
7 different. I have to go back to my letter that I
8 addressed to the IRS attaching 1120-S for 2004, then I
9 can verify which was the accurate year. As far as the
10 way I see it, 11/12 (phonetic) is the year.

11 Q. So sitting here today, you do not know if the
12 1120-S for 2004 in plaintiffs' exhibits is the filed
13 copy for 2004?

14 A. That's correct, I do not recall how that happened.

15 Q. Mr. Taha, you've previously testified about a
16 State of California refund claim in this case; correct?

17 A. Yes.

18 Q. You haven't produced any documents for the State
19 of California refund claim; correct, they're not
20 included in Plaintiffs' Exhibit List?

21 A. Provided the exhibit list to the State of
22 California?

23 Q. Let me start my question again. You have not
24 included in your exhibits any State of California
25 refund claim; correct?

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1 A. That's correct, it's 540X, and I didn't think it
2 was necessary because Plaintiff Taha or taxpayer Taha
3 was refunded his tax, so I didn't think it was a
4 necessity to include it here.

5 Q. And that's the same with your refund claim, your
6 federal refund claim for the same years, you haven't
7 included any federal -- your federal refund claims in
8 plaintiffs' exhibits; correct?

9 A. Whose?

10 Q. Yours.

11 A. That's correct.

12 Q. And that's the same with Mr. Khalil's refund
13 claims, his refund claims are not included in
14 plaintiffs' exhibits; correct?

15 A. That's correct.

16 Q. And that's the same with a refund check from the
17 State of California to plaintiffs, that's not included
18 in plaintiffs' exhibits; correct?

19 A. Correct.

20 Q. And that's the same with a refund check to you for
21 tax years 2002 and 2003, those refund checks are not
22 included in plaintiffs' exhibits; correct?

23 A. Correct.

24 Q. And that's the same with Mr. Khalil's refund
25 checks, those checks are not included in plaintiffs'

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1 exhibits; correct?

2 A. Correct.

3 MS. KANYER: Your Honor, may I take just one
4 moment?

5 THE COURT: May you what?

6 MS. KANYER: Take just one moment.

7 THE COURT: Yes, certainly.

8 MS. KANYER: Chat with co-counsel.

9 No further questions, Your Honor.

10 THE COURT: Okay. Thank you. Mr. Taha, do
11 you have anything you would care to add to your
12 testimony?

13 MR. TAHA: I do not recall if I said it
14 earlier. Clearly I explained the occurrence of the
15 debt. It seemed like counsel may have confused and I
16 may have confused her, because the way I tried to
17 explain when the debt occurred.

18 So my testimony was the debt normally occurs
19 yearly for that specific year if it was not paid to the
20 shareholder. If it was not paid, it will continue
21 being owed by the shareholder for the year after and it
22 accumulates.

23 So if I misunderstood counsel's question when
24 the debt occurred, if that was the word, and I said the
25 debt occurred, I explained it in multiple of

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1 statements, depending on when, for what year it was
2 occurred, and if it became bad debt, then it occurred
3 in October, 2004.

4 So I hope this would clarify how that debt
5 became a debt versus it became bad debt. Bad debt
6 means it was lost. Debt, it means it's still being
7 owed to the shareholder. I hope that clarifies that
8 question. I know I may have confused you, but that's
9 my clarification.

10 THE COURT: Thank you very much.

11 MR. TAHA: I'm sorry?

12 THE COURT: Thank you very much.

13 MR. TAHA: Thank you, Your Honor.

14 And I do not recognize this 1120-S 2004 that
15 you questioned me about. But if you have no objection,
16 I'm trying to rethink about it, try to see where my
17 letter that I sent to the IRS with attached 1120-S, and
18 that will be primarily the date it was sent to the IRS.

19 The difference between 2012 and 2003, I
20 agree, I'm confused of it because I cannot recollect
21 how it happened, whether it was sent again, even it was
22 sent again.

23 Because you asked me, Counsel, the question
24 if I ever filed another 2004 1120-S, and my answer was,
25 no. But if this happened, it's the same 1120-S for

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1 2004. There's no change to a single number. They're
2 all the same numbers. It's a matter of whether this
3 was filed again as a confirmation or it was filed in
4 the year 2012.

5 So I just want to clarify that. And as I
6 said, I would review the letter that I sent to the IRS,
7 that would be the standing date.

8 THE COURT: Thank you.

9 MR. TAHA: Thank you, Your Honor. And thank
10 you, Counsel.

11 THE COURT: All right. You may return to
12 your chair by the table.

13 Ms. Kanyer, where do we go from here?

14 MS. KANYER: Your Honor, at this time we
15 would like to move in Defendant's Exhibits 1, 2, and 3,
16 which are Forms 4340 because they are
17 self-authenticating and not hearsay.

18 So I have the -- the 4340s come with a
19 certificate of record which actually has the seal. The
20 one that's in the binders are the ones that we scanned
21 into our system and then used a Bates label so we could
22 produce them to plaintiff.

23 But if Your Honor would like, I can approach
24 and show the certified copies.

25 And so Exhibit 1 is a Form 4340, "Certificate

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1 of Assessment, Payments and Other Specified Matters for
2 Tax Year 2002."

3 Defendant's Exhibit 2 is for tax year 2003.

4 And Defendant's Exhibit 3 is for tax year
5 2004.

6 THE COURT: May I have a simpleminded
7 question?

8 MS. KANYER: Yes.

9 THE COURT: It has to do with defendant's
10 Exhibit 1. There appear to be two dates that are out
11 of order from the date standpoint; that is, the claim
12 disallowed occurs before the amended return file?

13 MS. KANYER: I couldn't describe to you
14 exactly why that happens, but I do know that these
15 dates are used to accurately reflect the dates in the
16 IRS records. I don't think the order in which they
17 appear on the transcript changes it.

18 THE COURT: But these are the certified
19 records, notwithstanding that?

20 MS. KANYER: Yes, Your Honor.

21 THE COURT: All right. DX-1, -2, and -3 are
22 admitted.

23 (Defendant's Exhibit Number 1 was admitted
24 into evidence.)

25 (Defendant's Exhibit Number 2 was admitted

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1 into evidence.)

2 (Defendant's Exhibit Number 3 was admitted
3 into evidence.)

4 MS. KANYER: Your Honor, at this time we
5 would like to call Revenue Agent Wolff to the stand.

6 THE COURT: Thank you.

7 If you'll stop about right there and raise
8 your right hand to be sworn.

9 Do you swear or affirm that the testimony
10 you're about to give at this trial shall be the truth,
11 the whole truth, and nothing but the truth so help you
12 God?

13 THE WITNESS: I do.

14 THE COURT: Thank you. And when you get to
15 the witness stand, if you would please hesitate for a
16 moment, make yourself comfortable, and then state your
17 full name for the record, that would be helpful.

18 THEREUPON,

19 DIEDRICH WOLFF,
20 a witness, having been first duly sworn, upon his oath,
21 testified as follows:

22 THE WITNESS: My full name is Diedrich,
23 D-I-E-D-R-I-C-H, last name Wolff, W-O-L-F-F.

24 THE COURT: Thank you. You may proceed.

25 DIRECT EXAMINATION

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1 BY MS. KANYER:

2 Q. Good afternoon, Mr. Wolff.

3 A. Good afternoon.

4 Q. You just stated your name, so can I please have
5 your address for the record, your business address?

6 A. Business address is 850 Trafalgar Court. That's
7 in Maitland, Florida, 32751.

8 Q. Can you spell Trafalgar?

9 A. Yes, lots of As. T-R-A-F-A-G-A-R -- well, there's
10 an "L" in there somewhere, but everything's an A.

11 THE COURT: Same name as the British military
12 event?

13 THE WITNESS: I think so.

14 THE COURT: All right. And that helps.
15 Thank you.

16 BY MS. KANYER:

17 Q. Mr. Wolff, where are you currently employed?

18 A. I'm currently employed with the Internal Revenue
19 Service.

20 Q. And what is your current job title?

21 A. It's internal revenue agent.

22 Q. And revenue agent Wolff, where are you currently
23 located?

24 A. At the Maitland, Florida, what we call POD, post
25 of duty.

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- 1 Q. And how long have you been with the IRS?
- 2 A. A little more than 25 years.
- 3 Q. Now, before we get into your work experience,
- 4 revenue agent Wolff, what schools have you attended?
- 5 A. How far back do we need to go?
- 6 Q. Let's start with just college.
- 7 A. College, I graduated from high school, of course,
- 8 and went to the George Washington University in
- 9 Washington, D.C. I completed the bachelor's in
- 10 accounting degree.
- 11 Q. And what year did you graduate?
- 12 A. Forgive me, but that was 1984 or '85.
- 13 Q. Do you have any other education?
- 14 A. Later on I wanted to move into tax, so I secured a
- 15 degree from the American University for a master's
- 16 degree in taxation.
- 17 Q. And what year was that?
- 18 A. I think I finished it in 1998 or 1999.
- 19 Q. And revenue agent Wolff, are you a CPA?
- 20 A. Yes, I am.
- 21 Q. And what is a CPA?
- 22 A. Certified public accountant.
- 23 Q. And where are you a CPA?
- 24 A. I passed the exam in the state of Maryland.
- 25 Q. And what year was that?

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1 A. 1986.

2 Q. And revenue agent Wolff, how long have you been
3 with the IRS in Maitland, Florida?

4 A. Since 2009 or 2010. It's about nine years, I
5 believe.

6 Q. Can you please describe your current job
7 responsibilities?

8 A. Currently I conduct examinations of Forms 1040,
9 1040-Xs, 1120s, 1120-Ss, and 1065s, 1065s being
10 partnership returns.

11 Q. And I believe we haven't yet during this trial
12 said what an 1120 is. I'm assuming you're talking
13 about forms; correct?

14 A. Correct. An 1120 is a corporate tax return. It
15 is not an S corp return; it's different. It is a
16 taxpaying entity.

17 Q. And what does it mean to examine a return?

18 A. It's to look at a particular item on a return that
19 has been selected for you or suggested for you, that,
20 along with certain mandatory audit techniques that are
21 used in every audit. Sometimes that expands into other
22 areas, and sometimes that expands into other years.

23 Q. Okay. Have you ever examined a refund claim?

24 A. Many.

25 Q. And what is your process for examining refund

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1 claims?

2 A. Generally, it's the claim itself, to start with.
3 There is some change requested on the original 1040, we
4 start with the claim, the adjustment that the taxpayer
5 want to make, and we figure out whether it's
6 appropriate under the statutes; and if so, we allow it.

7 There are many outcomes that can happen. We
8 can allow it totally, partially, we can disallow it
9 fully, and we can disallow it fully and make additional
10 assessments on the original return, if the statute is
11 still open on the original return.

12 Q. Thank you. Where else have you been located since
13 you've been with the IRS other than Maitland, Florida?

14 A. I started in Washington, D.C. at 500 North Capital
15 Street. That was in 1994. We did a lot of training.
16 All IRS hires go through many series of trainings.

17 I stayed at 500 North Capital for about a
18 year, and then moved to the Wheaton, Maryland post of
19 duty where I remained there until approximately the
20 year 2000.

21 Q. So when you were at the IRS on North Capital
22 Street, what was your title?

23 A. Internal revenue agent. I was hired as an
24 internal revenue agent.

25 Q. And then when you were in the Wheaton location,

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1 what was your title?

2 A. The same, internal revenue agent.

3 Q. And what were your job responsibilities as an
4 internal revenue agent when you were in the D.C. and
5 Wheaton offices?

6 A. Well, in the D.C., it was just new agent training,
7 which is generally just very limited to -- for example,
8 it might look at Schedule A 1040s only as a trainee.
9 Your competency is not up to speed yet. But when I
10 moved to Wheaton, my variety of work expanded.

11 Q. I'm sorry, you mentioned a Schedule A?

12 A. Schedule A 1040s. It's like contributions, real
13 estate taxes, medical expenses, a typical Schedule A as
14 part of the 1040.

15 Q. Okay. And when you were in the Wheaton, Maryland
16 office, what were your job responsibilities?

17 A. They had expanded to 1120s and then later into
18 flow-through entities, which are 1120-S and 1065.

19 Q. I believe you also mentioned training. Can you
20 describe the training that you went through at the IRS?

21 A. IRS currently has four phases of training, the
22 first phase, Phase 1, is general; it just relates to
23 1040s. Phase 2 then is more involved, more involved
24 1040, more in-depth, including rental activities and
25 more technical stuff, including the inaltman (phonetic)

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1 taxes and the various credits.

2 So it's -- when you finish Phase 1 and 2,
3 you've essentially finished all the training you're
4 going to get for the 1040.

5 Q. And is all that training on campus, or do you do
6 actual work with real taxpayers?

7 A. Well, it's both, you go for several weeks of
8 training. Phase 1 can last three or four weeks.
9 Phase 2 can also last three weeks. But it's usually in
10 a site together and just training, is all you're doing
11 is training.

12 Q. And then were there any other phases beyond
13 Phase 1 and Phase 2?

14 A. Phase 3 is corporate training, 1120, and would
15 usually last -- a little shorter, maybe two weeks.

16 Q. And was there just those three trainings, or were
17 there additional trainings?

18 A. One more, it's called flow-through training, which
19 includes 1120-S and 1065.

20 Q. And what were your job responsibilities after you
21 finished your training?

22 A. I was a fully trained revenue agent, so I would be
23 assigned tax returns by my group manager. And I
24 conduct those examinations and close the case with
25 either additional tax assessed or sometimes there's a

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1 no change, whatever the case may be.

2 Q. And after 2000 -- after year 2000, where were you
3 working?

4 A. I went to 1111 Constitution Avenue into the IRS
5 headquarters. I changed my job description from
6 revenue agent to tax law specialist.

7 Q. And what were you doing as a tax law specialist?

8 A. I was working in the forms and publications
9 division of IRS.

10 Q. And what were your job responsibilities in the
11 forms and publications division?

12 A. To update forms and publications according to
13 whatever congress decided to change on a year-to-year
14 basis.

15 Q. Do you recall any specific forms that you worked
16 on sitting here today?

17 A. Initially there was individuals were working
18 exclusively in publications, and other individuals were
19 working exclusively in forms. But gradually over a few
20 years, they started to mix the forms and publications
21 together, and it made logical sense.

22 For example, I was responsible for
23 Publication 463, which is travel, entertainment, gift,
24 and car expenses. It's a rather -- it's a large
25 publication. It's referred to a lot by 1040 users.

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1 And Form 2106, which is attached to the 1040, is an
2 integral part of that publication, so logically that
3 particular form would be assigned to me. So I had a
4 mix of publications and other forms to work on.

5 Q. And so were you at the 1111 Constitution Avenue
6 headquarters until you went to Maitland?

7 A. Before that we moved to the -- I'm not sure you
8 call it the headquarters overflow, but it's in
9 New Carrollton, there was three large buildings which
10 was also IRS headquarters; just an extension of 1111.

11 Q. And did you go from forms and publications to the
12 Maitland office?

13 A. Correct, I wanted to reside in Florida, and the
14 option was to go back to being a revenue agent. So
15 that's what I decided to do.

16 Q. Okay. Revenue agent Wolff, can I please have you
17 turn to Defendant's Exhibit 7. Defendant's Exhibit 7
18 is in the binder that's labeled "Defendant's Exhibits."
19 If you can turn to Tab 7. Defendant's Exhibit 7 is
20 titled "Form 1040-X, Amended U.S. Individual Income Tax
21 Return for Tax Year 2002," and it begins Bates
22 USPROD15. And "U.S. Prod" means that we produced them
23 from our file.

24 Revenue agent Wolff, do you recognize
25 Defendant's Exhibit 7?

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1 A. Yes, I do.

2 Q. What is this?

3 A. It's a 1040-X, which is an amended U.S.

4 individual income tax return.

5 Q. Is it also considered a claim for refund?

6 A. Generally, yes, it can be classified as an
7 abatement if the tax was unpaid when the claim is
8 filed.

9 Q. And is it also been considered a claim for
10 refund --

11 A. Yes.

12 Q. -- if there is no abatement?

13 A. Same form.

14 Q. Have you seen documents like this in the normal
15 course of your job responsibilities?

16 A. Yes.

17 Q. How often would you say you work with amended
18 individual tax returns?

19 A. Currently, weekly.

20 Q. Looking at this document, whose amended return is
21 this?

22 A. This is for Mohamad Taha and Sanaa Yassin.

23 Q. And if I can direct your attention to the stamp in
24 the lower left-hand corner, do you see that stamp?

25 A. Yes, I do.

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1 Q. What is that stamp?

2 A. This is the first stamp applied to the paper
3 return, and it's a received stamp.

4 Q. And what date does it say that it is received?

5 A. It's difficult to read, but I believe it's
6 November 29, 2007.

7 Q. Is that a stamp in IRS marking?

8 A. Yes, it's for the Fresno, California service
9 center.

10 Q. Okay. What is your understanding of how this
11 stamp comes to get placed on a 1040-X such as this?

12 A. My understanding is that when a 1040-X comes in,
13 it is always stamped, and this is the date when it's
14 received, the actual date when IRS secures or takes
15 possession of the paper document.

16 Q. Do you know why the IRS places a stamp on 1040-Xs?

17 A. Statute dates are important, and that is part of
18 their general procedures in submission processing, to
19 always stamp the 1040-X.

20 Q. So was this stamp made in the ordinary course of
21 the IRS's activities?

22 A. Yes.

23 Q. And is it also your understanding that this return
24 was kept in the IRS's normal business activities?

25 A. Normal business?

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1 Q. Business activities?

2 A. Yes.

3 MS. KANYER: Your Honor, at this time the
4 United States offers Defendant Exhibit 7 as the
5 IRS-filed copy of Form 1040-X for 2002.

6 THE COURT: Mr. Taha, do you have a view?

7 MR. TAHA: I'm fine with it.

8 THE COURT: What?

9 MR. TAHA: I'm fine with it.

10 THE COURT: All right. Admitted.

11 (Defendant's Exhibit Number 7 was admitted
12 into evidence.)

13 BY MS. KANYER:

14 Q. Revenue agent Wolff, can you tell me what your
15 understanding is of what happens to an envelope that is
16 received at the IRS service center?

17 A. The envelope is opened. And there's a unique way
18 the envelope is opened for each submission. The
19 envelope is cut on three sides and opened completely so
20 nothing can be missed in the interior of the envelope.

21 Q. Do you know where the IRS actually receives paper
22 returns?

23 A. Well, they call it their mailroom, so it's a
24 rather large one.

25 Q. And after a document is stamped such as Exhibit 7,

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1 do you know how the IRS tracks those returns?

2 A. It is moved through a pipeline. I don't know
3 their precise procedures, but I notice there are
4 several indices on the return indicating different
5 locations within the pipeline.

6 Q. And what do you mean by there's certain indices on
7 this return about the pipeline?

8 A. Well, in the bottom of the return there is a stamp
9 that says "December 4, 2007," and a series of numbers.
10 That would appear to be the next location where an
11 individual actually stamped it. And I believe the
12 series of numbers identifies what is known as a 1040-X
13 unit that actually had possession of this document and
14 stamped it.

15 Q. And what is your understanding of the accounts
16 management stamp that's also on this 1040-X, Exhibit 7?

17 A. I believe that after December 4th, and possibly
18 because there is no date of another indicator here, it
19 made its way to accounts management. And they --
20 accounts management stamped this on December 5, 2007.

21 Q. Do you know whether this document was ever scanned
22 into any sort of system?

23 A. I believe that's -- that's -- when you look at the
24 accounts management stamp, at the bottom it says
25 "Fresno ICT," which means image control team, I believe

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1 at that point this document was converted into an
2 image. I'm not sure if it's PDF or whatever image, it
3 is a computer image after that date.

4 Q. Do you know what happens when two tax returns are
5 filed in the same envelope?

6 A. They are separated. The individual that puts them
7 in the image control process separates returns, I
8 believe it's by a blue sheet of paper.

9 Q. When two returns come in one envelope, what is
10 your understanding of how or if any received stamps are
11 put on those returns?

12 A. Well, done correctly, they both get a received
13 stamp based on the individual's review of the paperwork
14 identifying a second return.

15 THE COURT: Ms. Kanyer, may I ask Mr. Wolff a
16 quick question?

17 MS. KANYER: Of course.

18 THE COURT: What happens to the paper copy
19 after the scan occurs?

20 THE WITNESS: I believe it is destroyed
21 fairly quickly. I believe the image becomes then the
22 original return, so documents are not filed for 20 or
23 30 years anymore.

24 BY MS. KANYER:

25 Q. But if two returns were included or scanned into a

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1 system, would the system have an ability to account for
2 various documents being scanned at once?

3 A. Right. If it was accidentally scanned together,
4 the image control would identify an anomaly being
5 another return and indicate that.

6 Q. Revenue agent Wolff, can I please have you return
7 to Defendant's Exhibit 8, which is behind the 8 tab in
8 defendant's binder. Defendant's Exhibit 8 is a
9 premarked exhibit. It's entitled "Form 1040-X, Amended
10 U.S. Individual Income Tax Return for Tax Year 2004,"
11 and it begins Bates USPROD00017.

12 Revenue agent Wolff, do you recognize
13 Defendant's Exhibit 8?

14 A. Yes.

15 Q. What is this?

16 A. It's a 1040-X, Amended U.S. Individual Income Tax
17 Return. And in this case for tax year 2004.

18 Q. Whose amended return is this?

19 A. Mohamad Taha and Sanaa Yassin.

20 Q. And revenue agent Wolff, I'd like to direct your
21 attention to the stamp in the lower left-hand corner,
22 it's sideways. Do you see that stamp?

23 A. Yes, I do.

24 Q. What is that stamp?

25 A. That is the received stamp.

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1 Q. And what is that received date?

2 A. It appears to be April 1, 2011.

3 Q. And is that an IRS marking?

4 A. Yes.

5 Q. And is that stamp made in the ordinary course of
6 the IRS business activities?

7 A. Yes.

8 Q. And what does that stamp mean?

9 A. It means that the IRS took possession of this
10 document on April 1st in the Fresno, California service
11 center.

12 Q. And is it your understanding that this document
13 was kept in the IRS's -- in the normal course of the
14 IRS's regular conducted activities?

15 A. Yes.

16 MS. KANYER: Your Honor, at this time we
17 would like to move to admit Defendant's Exhibit 8 as
18 the IRS's filed copy of Form 1040-X for 2004.

19 THE COURT: Mr. Taha?

20 MR. TAHA: No objection, Your Honor.

21 THE COURT: All right. Admitted.

22 (Defendant's Exhibit Number 8 was admitted
23 into evidence.)

24 BY MS. KANYER:

25 Q. And looking at that accounts management stamp,

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1 what is your understanding of what that accounts
2 management stamp means?

3 A. Similar to the previous document, accounts
4 management was the final recipient of the paper copy,
5 and it was scanned into the system on April 22, 2011.

6 Q. And revenue agent Wolff, can I have you please
7 turn back in the binder to Defendant's Exhibit 4.
8 Defendant's Exhibit 4 is a premarked exhibit titled
9 "Form 1040, U.S. Individual Income Tax Return for Tax
10 Year 2002." It has Bates labeled beginning
11 USPROD00010.

12 Revenue agent Wolff, do you recognize
13 Defendant's Exhibit 4?

14 A. Yes, I do.

15 Q. What is it?

16 A. It's a Form 1040, U.S. Individual Income Tax
17 Return for Tax Year 2002.

18 Q. How often do you work with Forms 1040, U.S.
19 individual income tax returns, in your job
20 responsibilities?

21 A. On a daily basis.

22 Q. Looking at this exhibit, whose Form 1040 is this?

23 A. It's Mohamad Taha and Sanaa Yassin.

24 Q. So there are no stamps on this document; correct?

25 A. Correct.

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1 Q. I should say no received stamp on this document;
2 correct?

3 A. Correct.

4 Q. Do you know why that is?

5 A. This return would have been received on a timely
6 basis on or before April 15, 2013, and because of that
7 would not receive a received stamp.

8 Q. And that's the IRS's normal practice?

9 A. Yes.

10 Q. I'd like to direct your attention to the numbers
11 in the upper right-hand corner.

12 A. Yes.

13 Q. There's a big group of numbers. Do you know what
14 that is?

15 A. That's called a document locator number, DLN for
16 short.

17 Q. And what is a DLN number?

18 A. I believe it started as a physical location for
19 the document itself.

20 Q. Do you know what it is now?

21 A. If it's an image -- I can't be 100 percent
22 certain, but everything still gets a document locator
23 number. If it's an image, it's obviously located in
24 some database somewhere, but everything still has a DLN
25 number.

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1 Q. And do you know --

2 THE COURT: Ms. Kanyer, may I interrupt for
3 just a moment?

4 MS. KANYER: Sure.

5 THE COURT: Mr. Wolff, you identified the
6 document as having been timely filed in 2013. I think
7 you probably meant 2003; is that correct?

8 THE WITNESS: Did I say '13?

9 THE COURT: Yes.

10 THE WITNESS: Yes, it's 2003, April 15, on or
11 before.

12 MS. KANYER: Thank you, Your Honor, I
13 appreciate that.

14 BY MS. KANYER:

15 Q. And that DLN number, is that an IRS marking?

16 A. Yes, it is.

17 Q. And is it made in the ordinary course of the IRS's
18 business activities?

19 A. Yes, it is.

20 MS. KANYER: Your Honor, defendant offers
21 into evidence Defendant's Exhibit 4 as the IRS's filed
22 copy of Form 1040 for 2000.

23 THE COURT: Before I ask Mr. Taha what he
24 thinks of your request, may I ask Mr. Wolff a question?

25 MS. KANYER: Sure.

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1 THE COURT: Mr. Wolff, based on your
2 testimony, it appears that the IRS changed its handling
3 of paper receipted documents sometime between 2003 and
4 2007 or '9; is that correct?

5 THE WITNESS: That's possible. There was a
6 great push for electronically filed returns and an
7 attempt to reduce all the paperwork, and at some point
8 scanning became the important way to maintain the file
9 in perpetuity, apparently.

10 THE COURT: You don't exactly know when that
11 occurred?

12 THE WITNESS: I do not, sir.

13 THE COURT: Okay. Thank you.

14 Mr. Taha?

15 MR. TAHA: No objection, Your Honor.

16 THE COURT: Admitted.

17 (Defendant's Exhibit Number 4 was admitted
18 into evidence.)

19 BY MS. KANYER:

20 Q. Revenue agent Wolff, can I have you please turn to
21 Defendant's Exhibit 6?

22 Defendant's Exhibit 6 is a premarked exhibit
23 titled "Form 1040-A U.S. Individual Income Tax Return
24 for Tax Year 2004." DX-6 is beginning Bates
25 USPROD00024.

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1 Revenue agent Wolff, do you recognize
2 Defendant's Exhibit 6?

3 A. Yes.

4 Q. What is it?

5 A. It's a Form 1040-A, U.S. Individual Income Tax
6 Return for Tax Year 2004.

7 Q. Do you know whose 1040-A this is?

8 A. It's for Mohamad Taha and Sanaa Yassin.

9 Q. Have you seen documents like this in the normal
10 course of your job responsibilities?

11 A. Yes, but not very often, quite frankly, because it
12 is a simpler tax return.

13 Q. So what's the difference between a Form 1040 and a
14 Form 1040-A?

15 A. Well, there is no business schedule, which would
16 be a Schedule C that you can attach to this return.
17 There are no rental activities or flow-through
18 activities on this form. I'm scanning quickly just to
19 make sure I'm not making any mistakes, but the Schedule
20 E is also not included. So several things are left out
21 of this return for simplicity.

22 Q. And revenue agent Wolff, I would like to direct
23 your attention to the stamp in the lower right-hand
24 corner of this document. Do you see that stamp?

25 A. Yes.

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- 1 Q. What is that stamp?
- 2 A. It's a received stamp.
- 3 Q. And what is the date of that received stamp?
- 4 A. October 25, 2011.
- 5 Q. And is this an IRS marking?
- 6 A. Yes, it is.
- 7 Q. And is it made in the normal course of the IRS's
- 8 business activities?
- 9 A. Yes.
- 10 Q. What is your understanding of what this stamp
- 11 means?
- 12 A. It's stamped received by apparently the
- 13 Philadelphia service center on October 25, 2011.
- 14 Q. And what is your understanding of why the IRS
- 15 placed a stamp on this return and not Defendant's
- 16 Exhibit 4 that we just looked at?
- 17 A. My understanding is because it is a delinquent
- 18 return.
- 19 Q. So if I could direct your attention to the group
- 20 of numbers in the upper right-hand corner. Do you see
- 21 those numbers?
- 22 A. Yes.
- 23 Q. What are those numbers?
- 24 A. I believe the "919" corresponds to an individual
- 25 that has reviewed the return.

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1 Q. Sorry, I think I directed you to the wrong side.

2 Can I direct you to the right-hand side group of
3 numbers?

4 A. Oh, okay. That's the document locator number.

5 Q. And is that an IRS marking?

6 A. Yes, it is.

7 Q. Is it made in the normal course of the IRS
8 business activities?

9 A. It is.

10 Q. Okay.

11 MS. KANYER: Your Honor, defendant offers
12 into evidence Defendant's Exhibit 6 as the IRS's filed
13 copy of the Form 1040-A.

14 THE COURT: Mr. Taha?

15 MR. TAHA: No objection, Your Honor.

16 THE COURT: Thank you. Admitted.

17 (Defendant's Exhibit Number 6 was admitted
18 into evidence.)

19 BY MS. KANYER:

20 Q. Revenue agent Wolff, can I please have you turn to
21 Defendant's Exhibit 9?

22 Defendant's Exhibit 9 is a premarked exhibit.
23 It's titled "Form 1120-S, U.S. Income Tax Return For an
24 S Corporation for Tax Year 2002." It begins Bates
25 USPROD00026.

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- 1 Revenue agent Wolff, do you recognize
- 2 Exhibit 9?
- 3 A. Yes, I do.
- 4 Q. What is it?
- 5 A. It's a Form 1120-S, U.S. Income Tax Return for an
- 6 S Corporation for Tax Year 2002.
- 7 Q. Have you seen documents like this in the normal
- 8 course of your job responsibilities?
- 9 A. Yes.
- 10 Q. How often do you work with 1120-Ss?
- 11 A. Depending if it's in my inventory, which I have
- 12 currently, it could be on a weekly basis, depending.
- 13 Q. Looking at this Form 1120-S, who is the taxpayer?
- 14 A. A-T-E-K, Atek Construction, Inc.
- 15 Q. I would like to direct your attention to the stamp
- 16 on the left side of this document. What is that stamp?
- 17 A. This is a received stamp.
- 18 Q. Okay. And is that an IRS marking?
- 19 A. Yes.
- 20 Q. And is it made in the normal course of the IRS's
- 21 business activities?
- 22 A. Yes, it is.
- 23 Q. That stamp is crossed out; correct?
- 24 A. Yes.
- 25 Q. So what does that stamp indicate?

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1 A. The stamp indicates that it was received in the
2 Ogden, Utah service center on March -- I believe that
3 is 23, 2003. And specifically it's marked out and a
4 handwritten received date to the right of it is changed
5 to March 15, 2003.

6 Q. I'd like to direct your attention to the group of
7 numbers in the upper right-hand corner. Do you see
8 those numbers?

9 A. Yes, I do.

10 Q. What are they?

11 A. That's a document locator number.

12 Q. And is that an IRS marking?

13 A. Yes.

14 Q. Is it made in the normal course of the IRS's
15 business activities?

16 A. Yes.

17 MS. KANYER: Your Honor, defendant offers
18 into evidence Defendant's Exhibit 9 as the IRS's filed
19 copy of Form 1120-S for 2002.

20 THE COURT: Mr. Taha, I have a question for
21 Mr. Wolff again. May I ask it?

22 MR. TAHA: Yes, Your Honor. I could probably
23 ask him a couple of simple questions.

24 THE COURT: I'm sorry, what?

25 MR. TAHA: I have a couple of questions to

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1 ask.

2 THE COURT: You may ask -- when your time
3 comes for cross-examination, you may ask them. I just
4 have a technical question for Mr. Wolff at the moment.

5 MR. TAHA: Okay.

6 THE COURT: Mr. Wolff, what are the
7 circumstances in which one receives stamp could be
8 crossed out and a handwritten notation added?

9 THE WITNESS: My understanding is that there
10 is potentially a grace period available for certain
11 returns, and that may have been the case here so that
12 the return would not be identified as a delinquent
13 return.

14 THE COURT: I suppose I have to ask the
15 follow-up question, I apologize to all.

16 The due date for a Subchapter S corporation
17 is March 15th; is that correct?

18 THE WITNESS: That's correct, sir.

19 THE COURT: All right. Thank you.

20 MS. KANYER: May I ask a follow-up question,
21 Your Honor?

22 THE COURT: Certainly.

23 BY MS. KANYER:

24 Q. Are there other options available such as a timely
25 postmark that could also warrant a crossing out of a

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1 received date?

2 A. That's correct. So technically it's received when
3 the postmark is postmarked on the envelope. So that's
4 more likely an explanation in this case, and thank you
5 for helping me with that.

6 MS. KANYER: Your Honor, we offer into
7 evidence Defendant's Exhibit 9 as the IRS's filed copy
8 of the 1120-S.

9 THE COURT: Mr. Taha?

10 MR. TAHA: No objection, Your Honor.

11 THE COURT: Admitted.

12 (Defendant's Exhibit Number 9 was admitted
13 into evidence.)

14 BY MS. KANYER:

15 Q. Revenue agent Wolff, may I please have you turn to
16 Defendant's Exhibit 10?

17 Defendant's Exhibit 10 is a premarked
18 exhibit. It's titled "Form 1120-S for U.S. Income Tax
19 Returns for an S Corporation for Tax Year 2003." DX-10
20 begins Bates label USPROD00044.

21 Revenue agent Wolff, do you recognize this
22 document?

23 A. Yes, I do.

24 Q. What is it?

25 A. It's a Form 1120-S, U.S. Income Tax Return for an

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1 S Corporation for Tax Year 2003.

2 Q. Looking at this Form 1120-S, who is the taxpayer?

3 A. Atek Construction, Inc.

4 Q. What year is this return for?

5 A. 2003.

6 Q. I'd like to direct your attention to the stamp
7 that's in the middle of this document. Do you see that
8 stamp?

9 A. Yes.

10 Q. What is that stamp?

11 A. The received stamp.

12 Q. And what date is on the received stamp?

13 A. March 18, 2004.

14 Q. And is that an IRS marking?

15 A. Yes, it is.

16 Q. And is it an IRS marking made in the normal course
17 of the IRS's business activities?

18 A. Yes.

19 Q. And what is your understanding of what this stamp
20 means?

21 A. It means that the paper copy was received in the
22 IRS mailroom in Ogden, Utah on March 18, 2004.

23 Q. I would like to direct your attention to the group
24 of numbers in the upper right-hand corner. Do you see
25 those numbers?

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1 A. Yes, I do.

2 Q. What are they?

3 A. That's a document locator number.

4 Q. And that's an IRS marking?

5 A. Yes, it is.

6 MS. KANYER: Your Honor, defendant offers
7 into evidence Defendant's Exhibit 10 as the IRS's filed
8 copy of Form 1120-S for 2003.

9 THE COURT: Mr. Taha?

10 MR. TAHA: I don't have any objection,
11 Your Honor.

12 THE COURT: Okay. Admitted. Thank you.

13 (Defendant's Exhibit Number 10 was admitted
14 into evidence.)

15 BY MS. KANYER:

16 Q. Revenue agent Wolff, can I please have you turn to
17 Defendant's Exhibit 11?

18 Defendant's Exhibit 11 is a premarked exhibit
19 titled "Form 1120-S, U.S. Income Tax Return for an
20 S Corporation for Tax Year 2004." DX-11 begins Bates
21 label USPROD00065.

22 Revenue agent Wolff, do you recognize this
23 document?

24 A. Yes.

25 Q. What is it?

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1 A. It's a Form 1120-S, U.S. Tax Return for an
2 S Corporation for Tax Year 2004.

3 Q. And looking at this Form 1120-S, who is the
4 taxpayer?

5 A. Atek Construction, Inc.

6 Q. I'd like to direct your attention to the stamp in
7 the lower left-hand corner, or left side of this
8 document. Do you have see that stamp?

9 A. Yes.

10 Q. What is that stamp?

11 A. It's a received stamp.

12 Q. What is the date of that received stamp?

13 A. November 13, 2007.

14 Q. And is that an IRS marking?

15 A. Yes.

16 Q. And is it an IRS marking made in the normal course
17 of the IRS's business practice?

18 A. Yes.

19 Q. What is your understanding of what that stamp
20 means?

21 A. My understanding is that it's received in the
22 Ogden, Utah service center on November 13, 2007.

23 Q. And I would like to direct your attention to the
24 numbers in the upper right-hand corner. Do you see
25 those numbers?

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1 A. Yes.

2 Q. What are they?

3 A. That's the document locator number.

4 Q. And is this an IRS marking made in the normal
5 course of the IRS's business practices?

6 A. Yes.

7 MS. KANYER: Your Honor, defendant offers
8 into evidence Defendant's Exhibit 11 as the IRS's filed
9 copy of Form 1120-S for 2004.

10 THE COURT: Mr. Taha?

11 MR. TAHA: No objection, Your Honor.

12 THE COURT: Admitted.

13 (Defendant's Exhibit Number 11 was admitted
14 into evidence.)

15 BY MS. KANYER:

16 Q. Revenue agent Wolff, may I have you please turn to
17 Defendant's Exhibit 12. Defendant's Exhibit 12 is a
18 premarked exhibit titled "Form 1120-S, Amended U.S.
19 Income Tax Return for an S Corporation for Tax Year
20 2004," and it begins Bates label USPROD000077.

21 THE COURT: Before we do that, may I actually
22 look at the various pages of DX-11?

23 MS. KANYER: Sure.

24 THE COURT: Thank you.

25 BY MS. KANYER:

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1 Q. Revenue agent Wolff, do you recognize Defendant's
2 Exhibit 12?

3 A. Yes.

4 Q. What is it?

5 A. It's a Form 1120-S, U.S. Income Tax Return for an
6 S Corporation.

7 Q. And is this 1120-S an amended 1120-S?

8 A. Looking at the box on line -- just above line 1,
9 "amended return" is checked.

10 Q. Looking at this Form 1120-S, who is the taxpayer?

11 A. Atek Construction, Inc.

12 Q. Have you seen documents like this Amended Form
13 1120-S in the normal course of your job
14 responsibilities?

15 A. Yes.

16 Q. How often would you say you've worked with Amended
17 Form 1120-Ss?

18 A. Occasionally.

19 Q. Like yearly?

20 A. Possibly one or two a year.

21 Q. I would like to direct your attention to the stamp
22 on the lower -- I would like to direct your attention
23 to the stamp in the middle of the document. Do you see
24 that stamp?

25 A. Yes.

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1 Q. The received stamp is the one I am looking at.

2 What is that stamp?

3 A. This is the date that the paper document was

4 received in the Ogden, Utah service center.

5 Q. And what is that date?

6 A. November 29, 2013.

7 Q. Is that an IRS marking?

8 A. Yes.

9 Q. Is that stamp made in the normal course of the
10 IRS's activities?

11 A. Yes, it is.

12 Q. So what does that stamp mean?

13 A. That means that the IRS took possession of the
14 paper document on November 29, 2013.

15 MS. KANYER: Your Honor, defendant offers
16 into evidence Defendant's Exhibit 12 as the IRS's filed
17 copy of the Amended Form 1120-S for 2004.

18 THE COURT: Mr. Taha?

19 MR. TAHA: No objection, Your Honor.

20 THE COURT: Admitted.

21 (Defendant's Exhibit Number 12 was admitted
22 into evidence.)

23 MS. KANYER: Your Honor, may I have a quick
24 moment?

25 THE COURT: Yes.

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1 MS. KANYER: No further questions at this
2 time, Your Honor.

3 THE COURT: Does that conclude Mr. Wolff's
4 testimony?

5 MS. KANYER: Yes, Your Honor.

6 THE COURT: Except for cross-examination?

7 MS. KANYER: That's correct.

8 THE COURT: All right. Do you have another
9 witness?

10 MS. KANYER: No, Your Honor.

11 THE COURT: Before we turn to Mr. Taha on
12 cross-examination, what do we do with the rest of the
13 exhibits?

14 MS. KANYER: Oh, Your Honor, thank you. Many
15 of these exhibits are also listed on Plaintiffs'
16 Exhibit List, and so I didn't have plaintiff -- excuse
17 me, Mr. Taha go back through these and move them into
18 evidence. I figured the Court did not want duplicates.

19 THE COURT: All right. Thank you.

20 Mr. Taha, are you ready for cross-examination
21 of Mr. Wolff, or we could do it tomorrow morning? It's
22 up to you.

23 MR. TAHA: I can do it now, Your Honor.

24 THE COURT: All right. Let's do it.

25 MR. TAHA: It's only a couple of questions.

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1 THE COURT: Yes.

2 CROSS-EXAMINATION

3 BY MR. TAHA:

4 Q. Good afternoon, Mr. Wolff.

5 A. Good afternoon, sir.

6 Q. My first question is about your experience or
7 knowledge of IRS Code 6511(d)-1. Do you have that
8 experience in dealing with income tax returns based on
9 that code?

10 A. I would have to consult the internal revenue code
11 to see exactly what you're talking about.

12 MS. KANYER: Your Honor, we would object,
13 that this is outside the scope of the direct. And it's
14 also moving into somewhat of a legal issue.

15 THE COURT: Well, it is that. But on the
16 other hand, the Court is inclined to allow the question
17 because this has got to be an issue that Mr. Wolff
18 occasionally sees.

19 But, Mr. Taha, you might list the title of
20 the code section for Mr. Wolff to refresh his memory.

21 MR. TAHA: Yes, Your Honor. May I?

22 THE COURT: Yes. You said 6511?

23 MR. TAHA: Yes, Your Honor.

24 THE COURT: Just a moment. I'll see if I can
25 find it.

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1 MR. TAHA: I have it here, Your Honor.

2 THE COURT: All right. Just a moment. Let
3 me find it.

4 MR. TAHA: Thank you.

5 THE COURT: Why don't you go forward. Let's
6 not stop progress, Mr. Taha. Go ahead, read the title.

7 MR. TAHA: This chapter is about Internal
8 Revenue Service Department of the Treasury,
9 Subchapter F procedure and administration, part 301,
10 procedure and administration.

11 And then the number 301.6511(d)-1. And the
12 title is "Overpayment of Income Tax on Account of Bad
13 Debts, Worthless Securities, Et Cetera." That's what
14 6511 is.

15 THE COURT: Now, Mr. Wolff, if you can -- or
16 Ms. Kanyer.

17 MS. KANYER: I just wanted to make clear that
18 Mr. Taha is referencing the regulation and not the 6511
19 code provision.

20 THE COURT: Well, let's hope that the statute
21 and the regulation have the same number. Just a
22 moment. 6511, what subsection?

23 MR. TAHA: The number, exact number, Your
24 Honor, is 301.6511(d)-1.

25 THE COURT: "Limitation or allowance on

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1 credit and refunds, filing of claim within prescribed
2 period." Is that what you're talking about?

3 MR. TAHA: No, the title, according to this
4 document, Your Honor, is "Overpayment of income tax on
5 account of bad debts, worthless securities, et cetera."

6 THE COURT: And it's 6511?

7 MR. TAHA: 6511(d)-1. The letter "d" is
8 between parentheses.

9 THE COURT: Just a moment.

10 Oh, you're talking about "d." I misheard
11 you. I thought you were talking about "b," as in boy.
12 You're talking about "d" as in dog. Now I have your
13 place.

14 You may ask your question of Mr. Wolff.

15 MR. TAHA: Your Honor, would you like for me
16 to present it for you to see for yourself what it is?

17 THE COURT: I certainly have the reference in
18 front of me, Mr. Taha, but you had a question pending
19 before Mr. Wolff.

20 MR. TAHA: Yes.

21 BY MR. TAHA:

22 Q. So the question of Mr. Wolff is, have you worked
23 on cases that in compliance or not in compliance, I
24 would say in compliance, based on debt that became
25 worthless, therefore, that debt is filed within the

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1 seven-year statute of limitations of IRS Code
2 6511(d)-1? Have you worked on some cases like this?
3 And what were the end result in your conclusion, if you
4 have been experience with cases like this?

5 A. If I understand your question, I have worked on
6 bad debt cases where the question was, ultimately, is
7 it a business bad debt or a nonbusiness bad debt, but I
8 have not had occasion to work on a case where the
9 statute was seven years.

10 Q. Thank you. In the course of working on tax
11 returns, Forms 1040-X, if a return was allegedly not
12 received by the IRS, which was filed but allegedly
13 denied for any reason and then the IRS would be
14 reminded by sending the IRS letters by reminding them
15 of that allegedly not received income tax return, would
16 the IRS be responsible to respond to that letter that
17 inquired about why did the IRS neglect mentioning this
18 specific IRS for this year?

19 THE COURT: Ms. Kanyer?

20 MS. KANYER: Your Honor, I object that this
21 question is compound. I'm not sure I understand
22 exactly what it's asking.

23 But revenue agent Wolff isn't a legal expert,
24 and he's not here to testify as to how IRS is treating
25 multiple letters that are coming in. He was asked to

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1 authenticate these documents.

2 THE COURT: Overruled.

3 BY MR. TAHA:

4 Q. Do you understand the question, Mr. Wolff? I'll
5 give you an example.

6 A. I think I understand your question.

7 Q. Okay.

8 A. But if I were an employee of the taxpayer advocate
9 office, I might have occasion to run into a situation
10 like that. But as a revenue agent examining returns, I
11 can't answer with any degree of accuracy your question.

12 Q. Let me put it in a different way, Mr. Wolff. If
13 that came to your attention, two returns were sent
14 simultaneously and you only acknowledge one return but
15 you did not acknowledge the other return and you
16 responded receiving one of the two returns, now, since
17 I as a taxpayer -- I'm talking -- I'm a representative
18 of the taxpayers, if the taxpayers did not receive a
19 response from the IRS to that one income tax return,
20 1040-X, if they did not receive a response, that means
21 it neglected or ignored or lost or whatever the case
22 is, so what the taxpayer responds say, Mr. IRS, I asked
23 a question about this year that I did not receive a
24 response for, so this letter comes to your attention,
25 possibly, or any other agent, does that agent respond

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1 to that letter saying, yes, we did not get it, or at
2 least you would inquire why the IRS did not respond to
3 that specific file according to the letter the taxpayer
4 reminded the IRS of?

5 MS. KANYER: Your Honor, we would object.
6 This is argumentative, and plaintiff is also
7 testifying.

8 THE COURT: It's more of a statement than it
9 is a question. We're going to take our -- it is 5:30,
10 and we're going to take our evening recess and we'll
11 reconvene tomorrow morning.

12 And that'll give you a chance to reformulate
13 your questions, Mr. Taha.

14 MR. TAHA: Okay.

15 THE COURT: Okay?

16 MR. TAHA: That's fine.

17 THE COURT: Mr. Wolff, we'll see you in the
18 morning.

19 THE WITNESS: Okay. Yes, Your Honor.

20 MR. TAHA: Your Honor?

21 THE COURT: Yes.

22 MR. TAHA: I found the letter that I sent to
23 the IRS with Form 1120-S, and -- sorry. I found the
24 letter that I addressed the IRS with Form 1120-S for
25 2004. And the date was --

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1 THE COURT: Well, do you have the letter with
2 you?

3 MR. TAHA: Yes, Your Honor.

4 THE COURT: All right. We'll wait. We'll
5 cover that tomorrow morning. Don't let us forget.

6 MR. TAHA: All right. I have it right here.

7 THE COURT: All right. Thank you.

8 MR. TAHA: Thank you.

9 THE COURT: Ms. Kanyer, may we recess for the
10 evening?

11 MS. KANYER: Yes, Your Honor.

12 THE COURT: Mr. Wolff, do you mind?

13 THE WITNESS: Not at all.

14 THE COURT: All right. We're in recess for
15 the evening. Thank you.

16

17 (Proceedings concluded at 5:31 p.m. on
18 December 9, 2019, to be resumed at 9:30 a.m. on
19 December 10, 2019.)

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1 COURT CERTIFICATE

2 STATE OF FLORIDA)

3 COUNTY OF HILLSBOROUGH)

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5 I, Lori L. Bundy, Registered Merit Reporter,
6 certify that I was authorized to and did
7 stenographically report the foregoing proceedings and
8 that the transcript is a true and complete record of my
9 stenographic notes.

10

11 DATED this December 17, 2019.

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14 s/Lori L. Bundy

15 Lori L. Bundy,

16 RMR, CRR, FPR

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